

Standard Consultant Agreement

(For Local Assistance Federal-Aid Projects)

(CPMS Contract No. 9667)

This Agreement is between the City of San José, a municipal corporation (“City”), and Dokken Engineering, a California Corporation (“Consultant”).

This Agreement is made and entered into this 21st day of November, 2021 (“Contract Date”).

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 General: This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City for the following project:

Project Name: 9667 – Right of Way Consulting Services for West San Carlos St. & Mt. Pleasant Rd. (“Project”)

Project Location: Mt. Pleasant Road and West San Carlos Street

1.2 Exhibits: This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:

Exhibit A: Scope of Basic Services

Exhibit B: Compensation

Exhibit C: Insurance Requirements

1.3 Director: “Director” means the Director of Public Works or the Director’s designee.

1.4 Business Days: “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.

1.5 Entire Agreement: This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.

1.6 Amendments: This Agreement may be modified only by a written amendment executed by the parties. The Consultant shall only commence work covered by an amendment after the

amendment is executed and notification to proceed has been provided by City's Project Manager.

2. AGREEMENT TERM

- 2.1 Term:** This Agreement shall go into effect on Contract Date, contingent upon approval by the City, and the Consultant shall commence work after notification to proceed by the City's Project Manager. The Agreement shall end on September 30, 2024, unless extended by contract amendment.
- 2.2 Full Execution/Approval:** The Consultant is advised that any recommendation for Agreement award is not binding on the City until the Agreement is fully executed and approved by the City.

3. SCOPE OF SERVICES

- 3.1 Basic Services:** "Basic Services" means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director's satisfaction.
- 3.2 Additional Services:** "Additional Services" means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate to the Project but are not included in the Basic Services.
- 3.2.1 Authorization:** The Consultant can not perform any Additional Services without the Director's prior written authorization.
- 3.2.2 Director's Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the City.
- 3.3 Review and Inspection of Services:** Consultant and any of its subconsultants shall permit the City, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

4. DESIGN SERVICE REQUIREMENTS

- 4.1 General:** This Section applies to any design services the Consultant performs as part of an Approved Service Order.
- 4.2 Standard Documents:** The Consultant is, or will become, familiar with the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San Jose, Department of Public Works, Standard Details, dated July 1992

(and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively "Standard Project Documents").

- 4.3 Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Consultant must be based on, and must incorporate, the Standard Project Documents.

5. CITY'S PROJECT MANAGER

The City's project manager for this Agreement is:

Name: Trinh Le	Phone No.: (408) 535-7859
Department: Public Works	E-mail: Trinh.Le@sanjoseca.gov
Address: 200 East Santa Clara, 6 th Floor Tower, San Jose, California 95113	

The Director can change the above project manager by giving the Consultant written notice.

6. CONSULTANT'S STAFFING

- 6.1 Consultant's Project Manager and Other Staffing:** Identified below are the following: (a) the Consultant's project manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), the Consultant must comply with the requirements of Subsection 17.2 below.

		<u>Required to File Form 700?</u>	
<u>Consultant's Project Manager</u>		Yes	No
Name: Jamie Formico	Phone No.: (916) 847-4554	X	
Address: 110 Blue Ravine Rd, Ste. 200, Folsom, California 95630	E-mail: jformico@dokkenengineering.com		
<u>Other Staffing</u>			
<u>Name:</u>	<u>Assignment:</u>		
1. Vanessa Cothran	Senior Right of Way Agent	X	
2. Jason Andrews	Senior Right of Way Agent	X	

3. Taylor Ross	Right of Way Assistant	X	
----------------	------------------------	---	--

6.2 Project Manager's Authority: The Consultant's project manager is authorized to act on behalf of the Consultant.

6.3 Staffing Changes: The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

7. USE OF SUBCONSULTANTS

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

7.2 Authority to Use: Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the Director, except that, which is expressly identified as follows:

Subconsultant's Name	Area of Work
1.	
2.	
3.	

7.2 Subconsultant Work: The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

7.3 Payment of Subconsultants: The Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the City.

7.4 Subcontracts Exceeding \$25,000: Any subcontract in excess of \$25,000 entered into by the Consultant as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

7.5 Subconsultant Substitution: Any substitution of subconsultant(s) must be approved in writing by Director prior to the start of work by the subconsultant(s).

8. INDEPENDENT CONTRACTOR

- 8.1 General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2 Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3 Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

- 10.1 Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$56,001.65** ("Maximum Total Compensation").
- 10.2 Omitted.**
- 10.3 Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**. **Exhibit B** contains a compensation table that sets forth how the City will pay the Maximum Total Compensation to the Consultant ("Compensation Table"). If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also includes a schedule setting forth the Consultant's rates and charges ("Schedule of Rates and Charges").
- 10.4 Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.
- 10.4.1 Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Consultant separately for that

task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

10.4.2 Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee basis.

10.4.3 Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all work to the Director's satisfaction.

10.4.3.1 Invoice: Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.3.2 Invoices Based on Time and Materials: If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

10.4.3.3 Monthly Invoices Based on Fixed Fee: If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the task(s) completed the previous month involve the Consultant performing construction administration services, the percentage of work completed during the previous month will be measured based on the percentage of construction completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

10.4.4 Compensation (Column 4): Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

10.4.4.1 Time & Materials: If time and materials is the basis of compensation, then the amount in Column 4 is a "not-to-exceed" or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director's sole

discretion) **may** use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

10.4.4.2 Fixed Fee: If “fixed fee” is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

10.5 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

10.5.1 Subconsultants: The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.5 of this Agreement addresses payment for the cost of subconsultants.

10.5.2 Maximum Amount of Reimbursable Expenses: The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

10.5.3 Expenses That Are Reimbursable: The City will reimburse the Consultant for only the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost plus the specified markup. In no event shall a markup for a reimbursable expense exceed 10 percent.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	10%
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	10%
3.	Telephone and facsimile transmission charges.	10%
4.	The rental of any specialized equipment to the extent the City’s project manager has preapproved, in writing, the cost of such rental.	10%
5.	With the written pre-authorization of the City’s project manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Preliminary Title Reports	No Markup

7.	Appraisals	No Markup
8.	Appraisal Reviews	No Markup
9.	Any other expenses expressly identified in Exhibit B as being reimbursable.	As specified, not to exceed 10%

10.6 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

10.6.1 Actual Costs: The Consultant can invoice the City for no more than the actual cost of each subconsultant plus up to a 5 percent markup.

10.6.2 Schedule of Rates and Charges: Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

10.6.3 Maximum Amount: The City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

10.7 Compensation Table – Part 4: Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.

10.8 Schedule of Rates and Charges: If **Exhibit B** contains a Schedule of Rates and Charges for the payment of services provided on a time-and-materials basis, the Schedule is subject to the following requirements.

10.8.1 Premium Pay: "Premium Pay" is any higher or additional charge for performing any services because of activities such as, but not limited to, expediting performance, working over 8 hours per day, working on Saturdays, Sundays or holidays, or working a swing or graveyard shift. The City will pay Premium Pay only in the following circumstances: (a) the Schedule of Rates and Charges provides for the payment of Premium Pay, and (b) the Consultant obtains the Director's prior written consent to perform work in a manner that would require Premium Pay.

10.8.2 No Increases: The City will **not** increase the Schedule of Rates and Charges during the Agreement term.

- 10.8.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.
- 10.9 Tax Forms Required:** The following are conditions on the City's obligation to process any payment pursuant to this Agreement:
- 10.9.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.
- 10.9.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.
- 10.10 Cost Principals and Administrative Requirements:** Notwithstanding anything to the contrary in this Agreement, the Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- 10.10.1 Compliance with Federal Procedures:** The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 10.10.2 Unallowable Costs:** Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by the Consultant to the City.
- 10.10.3 Subcontracts:** All subcontracts in excess of \$25,000 shall contain the provisions set forth in this Section 10.10.
- 10.11 Equipment Purchase:** Prior authorization in writing, by the Director shall be required before the Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 10.11.1 Competitive Quotations:** For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by Director; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

10.11.2 Disposition of Equipment: Any equipment purchased as a result of this Agreement is subject to the following:

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

49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

10.11.3 Subcontracts: All subcontracts in excess \$25,000 shall contain the provisions in this Section 10.11.

11. INDEMNIFICATION

11.1 Obligation: The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Consultant’s negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City’s use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement; or
- Any breach of this Agreement by the Consultant or any Subcontractors.

- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City as set forth in Section 2778 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) immediately when and as created by the Consultant or any of its Subcontractors pursuant to this Agreement: drawings, plans, elevations, sections, details, schedules, diagrams, specifications, studies, reports, surveys, data, information, models, sketches, and other similar documents and materials (collectively "Work Product").
- 13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.
- 13.3 City's Reuse:** The City's reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.
- 13.4 Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

15. AUDIT/INSPECTION OF RECORDS

- 15.1 Inspection Obligation:** For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; the Consultant and its subconsultants, and the City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of the Consultant and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.
- 15.2 Audit Dispute:** Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer
- 15.3 Unresolved Audit Issues:** Not later than thirty (30) calendar days after issuance of the final audit report, the Consultant may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- 15.4 Full Performance Required:** Neither the pendency of a dispute nor its consideration by the City will excuse the Consultant from full and timely performance, in accordance with the terms of this Agreement.
- 15.5 Audit of Contracts:** Consultant and subconsultant contracts, including cost proposals and 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 Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is the Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by the Consultant and approved by the City Project Manager to conform to the audit or review recommendations. The Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by the City at its sole discretion. Refusal by the Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Reasonable Accommodation:** The prohibition in Subsection 16.1 above is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.
- 16.3 Compliance Reports:** The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer may require the Consultant to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.
- 16.4 Violation:** A violation of the prohibition in Subsection 16.1 above or any part of this Section 16 constitutes the following: (a) a material breach of this Agreement, (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.
- 16.5 Subcontracts:** The Consultant shall include Subsections 16.1 through 16.4, inclusive, of this Agreement in each subcontract that it enters into in furtherance of this Agreement.
- 16.6 Waiver:** The Compliance Officer may waive any of the requirements of this provision if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.

17. CONFLICT OF INTEREST

17.1 General: The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

17.2 No Adverse Financial/Business Interest: The Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this Agreement, or any ensuing the City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing City construction project, which will follow.

The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

17.3 Subcontracts Over \$25,000: Any subcontract in excess of \$25,000 entered into by the Consultant as a result of this Agreement, shall contain all of the provisions of this Section 17.

17.4 Bidding Prohibition: The Consultant hereby certifies that neither the Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

17.5 Filing Form 700: In accordance with the California Political Reform Act (Government Code Sections 8311-83116), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as set forth herein and as otherwise required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

17.6 Future Services: The Consultant acknowledges each of the following with regard to performing future services for the City:

- The Consultant's performance of the services required by this Agreement may create an actual or apparent conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;
- Such an actual or apparent conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Consultant's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);

- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

- 19.1 Right to Terminate:** The Director reserves the right to terminate this Agreement upon thirty (30) calendar days' written notice to the Consultant with the reasons for termination stated in the notice.
- 19.2 For Cause:** The City may terminate this Agreement with the Consultant should the Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, The City may proceed with the work in any manner deemed proper by the City. If the City terminates this Agreement with Consultant, City shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to the City exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand.
- 19.3 Delivery of Work:** If the Director terminates the Agreement, the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.
- 19.4 Maximum Liability:** The maximum amount for which the City shall be liable if this Agreement is terminated is the compensation due and owing under the Agreement for Work Product completed by the Consultant as of the date of Consultant's receipt of the written notice of termination.
- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is emailed is effective when sent. A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.

20.3 To Whom Given: All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
Department of Public Works
Attn: Trinh Le
200 East Santa Clara Street, 6th Floor Tower
San Jose, California 95113
(408) 535-7859
Trinh.Le@sanjoseca.gov

To the Consultant: Dokken Engineering
Attn: Jamie Formico
110 Blue Ravine Rd, Ste. 200
Folsom, California 95630
(916) 847-4553
JFormico@dokkenengineering.com

20.4 Changing Contact Information: Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. STATE PREVAILING WAGE RATES

21.1 State Prevailing Wage Requirements: The Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

21.2 Subcontracts: Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section 21.

21.3 Transportation/Subsistence Costs: When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

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

22.1 Certification: The Consultant certifies to the best of his or her knowledge and belief that:

22.1.2 Prohibition on Use of State/Federal/Local Agency Funds: No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or

federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

- 22.1.2 When Disclosure Required:** If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 22.2 Material Representation:** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 22.3 Subcontracts:** The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

23. STATEMENT OF COMPLIANCE

- 23.1 Certification:** The Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- 23.2 Prohibition:** During the performance of this Agreement, the Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The Consultant and its subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Consultant and its subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 23.3 Compliance with DOT Regulations:** The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation –

Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- 23.4 Compliance with Title VI:** The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of its subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

24. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- 24.1 General Requirement:** This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". The Consultants who obtain DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- 24.2 Goal:** The goal for DBE participation for this Agreement is **0%**. Participation by DBE consultants or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- 24.3 Compliance with 49 CFR, Part 26:** DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the city deems appropriate.
- 24.4 Subcontracts:** Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section 8.
- 24.5 Terminating DBE:** A DBE firm may be terminated only with prior written approval from the City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting the City consent for the termination, the Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
- 24.6 Commercially Useful Function:** A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract 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 contract, 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 contract is commensurate with the work it is actually performing, and other relevant factors.

- 24.7 Extra Participant:** A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, 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.
- 24.8 Non-CUF Presumption:** If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract 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.
- 24.9 Records:** The Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 24.10 Final-Report Utilization:** Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the City with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the City.
- 24.11 Certification/Decertification:** If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to City within 30 calendar days.

25. DEBARMENT AND SUSPENSION CERTIFICATION

- 25.1 Certification:** The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in

the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

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

26. SAFETY

- 26.1 Compliance with Safety Regulations:** The Consultant shall comply with OSHA regulations applicable to the Consultant regarding necessary safety equipment or procedures. The Consultant shall comply with safety instructions issued by City Safety Officer and other City representatives. The Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- 26.2 Vehicle Code:** Pursuant to the authority contained in Section 591 of the Vehicle Code, the City has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- 26.3 Subcontracts:** Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Section 25.

27. CLAIMS SUPPORT

- 27.1 General Requirement:** If claims are filed by the City's construction contractor relating to work performed by the Consultant's personnel, and additional information or assistance from the Consultant's personnel is required in order to evaluate or defend against such claims; the Consultant agrees to make its personnel available for consultation with the City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- 27.2 Notice/Compensation:** The Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.

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

27.4 Subcontracts: Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Section 26.

28. MISCELLANEOUS

28.1 Gifts Prohibited: The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.

28.2 Disqualification of Former Employees: The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.

28.3 Waiver of a Violation: The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.

28.4 Acceptance of Services Not a Waiver: The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.

28.5 Compliance with Laws: The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

28.6 Business Tax: The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.

28.7 Assignability: Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.

28.8 Inspection of Work: The Consultant and its subconsultants shall permit the City, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect

the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

- 28.9 Rebates, Kickbacks or Other Unlawful Consideration:** The Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, the City shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
- 28.10 Contingent Fee:** The Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty the City has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- 28.11 Governing Law:** California law governs the construction and performance of this Agreement.
- 28.12 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 28.13 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 28.14 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 28.15 Use of electronic signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

IN WITNESS WHEREOF, the City and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Consultant must make one of the following representations by placing its initials in the space provided. The City will not process this Agreement unless the Consultant has initialed one of the provisions.

JL The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents

when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

_____ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

City of San José

Consultant

× Sarah Zarate
Sarah Zarate (11/21/2021)
Email: sarah.zarate@sanjoseca.gov

× John A Klemunes Jr.
jklemunes@dokkenengineering.com (11/17/2021)
Email: jklemunes@dokkenengineering.com

By _____

By _____

Name: Sarah Zarate Date
Title: Director, City Manager Office

Name: John A Klemunes Jr. Date
Title: President

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney

(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

Approved as to Form*:

[Sr.] Deputy City Attorney Date

*Approval is as to the form of the contract being used and not as to the scope or content of the work.

EXHIBIT A: SCOPE OF BASIC SERVICES

(For Local Assistance Federal-Aid Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

General Description of Project for which Consultant will Provide Services: Right-of-way consulting services are required for two Federal-Aid Projects, Mt. Pleasant Road Pedestrian & Bike Traffic Safety Improvements CML-5005 (156) and West San Carlos Urban Village Streetscape Improvements CML-5005 (162).

The Mt. Pleasant Road Pedestrian & Bike Traffic Safety Improvements project includes scope of installation of new sidewalk, installation of enhanced crosswalks, and upgrade of existing curb ramps and street lights. Proposed installation of new sidewalk encroaches into private properties at three (3) locations on the following two (2) parcels: APN 647-24-040 and APN 647-24-041.

The West San Carlos Urban Village Streetscape Improvements project includes scope of installation of new bulb-outs, installation of new and upgrade of existing curb ramps, installation of enhanced crosswalks and median islands, installation of new flashing beacons, modification of existing traffic signal systems, installation of new traffic stripes, and installation of new green street infrastructures. Topographic survey of the project area presents potential encroachment into private properties at several locations which belong to the nine (9) following parcels: APN 274-41-062, APN 277-04-066, APN 277-14-055, APN 277-16-028, APN 277-15-028, APN 277-17-027, APN 277-16-030, APN 277-15-017, and APN 277-20-062.

The purpose of this Project is to establish required Temporary Construction Easements (TCEs) at the eleven (11) affected parcels mentioned above. Temporary Construction Easements (TCEs) shall be as required per Caltrans' Right of Way Certification process for Federal-Aid projects with all documentation to conform to the 2021 Local Assistance Procedures Manual.

The general scope of work of the Consultant shall include the following:

- Project management and coordination with stakeholders;
 - Order title reports and perform appraisal reviews;
 - Assist the City with required documentation to establish temporary construction easements as required by Caltrans; and
 - Project close-out.
-

RIGHT OF WAY SERVICE FOR MT. PLEASANT ROAD

Task No. 1: Project Management and Coordination Services

- A. Services:** The Consultant will designate a Project Manager, acceptable to the City, who will be responsible for initiating the work, implementing the project management procedures and controls, and maintaining effective communications among the Consultant, City, and other agencies and organizations involved. The Consultant will designate a QA/QC leader who shall have the required technical experience to perform QA/QC for all engineering deliverables.

The Consultant will work closely with Caltrans or applicable funding sources to ensure all changes regarding certification, documentation, and procedures are implemented. By coordinating the Consultant's efforts with Caltrans, the Consultant will ensure that all the current documentation and procedures are used for right of way efforts for local public agency projects.

The Consultant will:

- Attain Title Reports Review Title Reports and implement solutions for items that may affect title or cause a delay in escrow
- Provide all gathered information to the appraiser and attain a detailed timeline to complete the assigned task
- Monitor progress and provide any additional information to the designated appraiser
- Review all reports supplied by the appraiser for quality assurance
- Provide draft reports to the review appraiser for final review and recommendations
- Prepare draft temporary construction easement and right-of-entry documentation for Client review and approval
- Provide final appraisal report, appraisal review, and acquisition documentation to the Client for final review
- Prepare staff reports for approval of just compensation
- Make offers in person to each property owner
- Attain executed documentation from each affected property owner
- Provide possession documentation in lieu of purchase contracts
- Supply condemnation support, if required
- Deliver fully executed documentation to escrow/title officers to close escrow and provide title insurance
- Coordinate the close of escrow and provide original copies of acquisition files to the Client

Deliverables: Consultant will provide the following:

1. Invoices and Financial Updates;
2. Routine Communication via email, meeting minutes; and
3. All deliverables required under each specific task.

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date: _____.
- On or before Project Closeout, or as when required under the specific tasks.

Task No. 2: Project Tracking Table

A. Services: The Consultant's Project Manager will maintain the Project tracking table and ensure that this information is sent to the City on a regularly requested schedule. The Project tracking table will be used as a component of effective project management to keep the project on schedule by outlining milestones, completion dates, comments, and any additional information the City may request.

B. Deliverables: Consultant will provide the following:

1. Initial Project Tracking Table in PDF format; and
2. Bi-Weekly Update of Project Tracking Table in PDF format.

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date: _____.
- On or before Project Closeout, or as when required under the specific tasks.

Task No. 3: Order Title Reports/Title Research and Capital Cost Estimates

- A. Services:** The Consultant will obtain title reports for the two (2) affected properties (APNs 647-24-040 and 647-24-041). The Consultant will perform all necessary research for each parcel being acquired. Agents may resolve or oversee resolution of problems relating to unusual circumstances regarding title or ownership and uncover any flaws, noting any exceptions pertaining to property such as mortgage liens, restrictions, easements, and rights of way.

The Consultant will provide capital cost estimates for the impacted right of way for the Mt. Pleasant Pedestrian and Bike Traffic Safety Improvements Project which will include current market data to support the acquisition costs. The Consultant will review recent sales data and provide an updated estimate of total acquisition costs based upon permanent and temporary impact areas provided by the City. This information will be summarized in a table and include a total cost for all acquisitions.

- B. Deliverables:** Consultant will provide the following:

1. Two Preliminary Title Reports (for Parcel APN 647-24-040 and Parcel APN 647-24-041); and
2. Capital cost estimates (for Parcel APN 647-24-040 and Parcel APN 647-24-041).

- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

On or before the following date: _____.

On or before 15 Business Days after receipt of the Notice to Proceed ("NTP") for this Agreement.

Task No. 4: Appraisal Process

- A. Services:** The Consultant will provide a Notice of Intent (“NOI”) to appraise letters along with acquisition policy brochures to all impacted property owners. Upon receipt of plat maps and legal descriptions, appraisals will be completed for two parcels (APNs 647-24-040 and 647-24-041) by licensed General Real Estate Appraisers. Appraisals will be arranged so that the property owner may accompany the appraiser during the inspection of the property. This allows the property owner the opportunity to provide additional information to the appraiser.

All appraisals will be prepared by an appraiser licensed with the State of California and will comply with all laws applicable to the specific appraisal and the Uniform Standards of Professional Appraisal Practice 49 CFR 24.2(a)(3). Appraisals will include a summary and a complete analysis for all valuation conclusions. Documentation obtained during the inspection, such as pictures, will be included in each report. Title information pertaining to ownership, drawings, and information relative to the parcel will be reviewed by the appraiser.

- B. Deliverables:** Consultant will provide the following:

1. Two (2) Appraisal Reports (for Parcel APN 647-24-040 and Parcel APN 647-24-041).

- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

On or before the following date: _____.

On or before 20 Business Days after receipt of deliverables from Task No. 3.

Task No. 5: Obtain Appraisal Review Reports

Services: Upon receipt of the two (2) Appraisal Reports, the City will determine if an independent appraisal review is required. If required, the Consultant will have a Certified General Real Estate Appraiser complete appraisal reviews. Upon acceptance and approval of the property appraisals, the Consultant will order an independent appraisal review from a Certified General Real Estate Appraiser acceptable to the City. See, Section 7 of the Agreement, entitled "Use of Subconsultants."

A. The review includes inspecting sales to determine comparability, reviewing appraisal for conformance to Uniform Standards of Professional Appraisal Practice, reviewing "highest and best use" conclusions, examining valuation methods, analyzing exhibits, checking mathematical calculations, and preparing a narrative report that describes the review process and sets forth the reasoning behind the review. An appraisal review is recommended to ensure that the appraisal is based on sound appraisal theory, contains appropriate documentation to support the appraisers' conclusions and complies with regulatory codes. A recommendation of just compensation is then made based on the reviewed, collected, assembled, correlated, and analyzed data.

B. Deliverables: Consultant will provide the following:

1. Two (2) Appraisal Review Reports (for Parcel APN 647-24-040 and Parcel APN 647-24-041); and
2. Recommendation of Just Compensation.

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date: _____.
- On or before 10 Business Days after receipt of deliverables from Task No. 4.

Task No. 6: Appraisal Summary Statement

- A. Services:** Upon written approval of Just Compensation by the City, the Consultant will complete a Summary Statement Relating to the Purchase of Real Property or an Interest Therein (Caltrans Exhibit 8-EW-16) for each property. This document will be delivered to property owners with the offer package during the initial meeting.
- B. Deliverables:** Consultant will provide the following:
1. Summary Statement Relating to the Purchase of Real Property or an Interest Therein (Caltrans Exhibit 8-EW-16).
- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
- On or before the following date: _____.
- On or before 10 Business Days after approval of Just Compensation by the City.

Task No. 7: Acquisition for Right of Way (Temporary Construction Easements/Right of Entries)

- A. Services:** The acquisition of right of way will be required from two (2) properties (APNs 647-24-040 and 647-24-041). All "Good Faith Negotiations" will be completed by the Consultant's Right of Way Team on behalf of the City. After completion of the appraisal process and Just Compensation determination, the Consultant will prepare the offer package and meeting with all owners in person to present and explain the offer package details. The offer package, reviewed and approved by the City's Real Estate Services, will include the offer letter, written summary of just compensation with supporting appraisal information, property owner exhibit showing property map with right of way take locations, Title VI information, "Your Property – Your Transportation Project" booklet. The Consultant will negotiate on behalf of the City with the property owner to arrive at a mutually agreeable settlement and prepare necessary purchase agreements and Temporary Construction Easement Deeds. The Consultant will obtain receipt of delivery of offer and/or present and secure tenant information statements, as applicable, during the initial meeting.

The Consultant will provide the City with a memorandum on the recommendation of the appropriate course of action regarding the various acquisitions with property owners requesting additional compensation and/or services beyond the initial offer package. Recommended settlement packages with justifications and impasse letters will be provided to the City for review. Working with the property owners to agreeable terms will be the Consultant's focus.

The Consultant will contact the property owners and prepare the Temporary Construction Easement documents to each property. The Temporary Construction Easement documents will need to be reviewed and approved by the City's Real Estate Services. The Consultant will, whenever possible, meet with property owners in person to explain the Temporary Construction Easement and project. The Consultant will also meet in person to obtain signatures.

Additionally, the Consultant will attend, at the request of the City, any Public Community Meetings regarding the project.

The Consultant will comply with all laws applicable to the specific project requirements. The Consultant's Right of Way Agents hold California Real Estate Salesperson's Licenses and are working under the direct supervision of a California Real Estate Licensed Broker.

B. Deliverables: Consultant will provide the following (for Parcel APN 647-24-040 and Parcel APN 647-24-041):

1. Right of Way Agreements;
2. Temporary Construction Easement Deeds;
3. Administrative Settlements;
4. Diaries;
5. Written Summary of Acquisitions;
6. Impasse Letters; and
7. Right of Entries.

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date: _____.
- On or before 5 months after approval of Just Compensation by the City.

Task No. 8: Escrow Coordination

- A. Services:** If required, upon reaching an agreement on the terms and conditions of the acquisition with the property owner(s), the Consultant will be available to take the required steps in opening escrow. The Consultant will supply fully executed agreements along with other supporting information to escrow to close each transaction. The Consultant will work closely with the City to take the required steps in the timely closing of all transactions. For the convenience of the property owner, the Consultant has a California Notary who will be available to notarize any documentation that is required at no cost to the property owner(s). Fully executed deeds and easements will be delivered to the City for acceptance prior to recording. In the event escrow services are not required, the Consultant is available to perform these services and record the required documentation.
- B. Deliverables:** Consultant will provide the following:

 - 1. Escrow Documents and Closing Statements (for Parcel APN 647-24-040 and Parcel APN 647-24-041)
- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

 - On or before the following date: _____.
 - On or before 5 months after approval of Just Compensation by the City.

Task No. 9: Caltrans Right of Way Certification

- A. Services:** The Consultant will coordinate with the City and supply all required documentation for the right of way certification. The Consultant will review all acquisition documents for proper and complete execution, including formal acceptance.
- B. Deliverables:** Consultant will provide the following:

 - 1. Right of Way Certification Documentation.
- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

 - On or before the following date: _____.
 - On or before 10 Business Days after receipt of deliverables from Task No. 8.

Task No. 10: Close-Out for Right of Way Services of Mt. Pleasant Road

- A. Services:** The original acquisition file for each affected parcel will be provided to the City by the Consultant upon completion of the Project. Each acquisition file will contain property information, diary report, written correspondence, just compensation documentation, appraisal(s), offer package, negotiations, title documentation, copies of recorded documents, and all applicable documentation.
- B. Deliverables:** Consultant will provide the following:
1. Original Acquisition Files (for Parcel APN 647-24-040 and Parcel APN 647-24-041).
- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
- On or before the following date: _____.
- On or before 5 Business Days after receipt deliverables from Task No. 9.

RIGHT OF WAY SERVICE FOR W. SAN CARLOS STREET

Task No. 11: Order Title Reports/Title Research and Capital Cost Estimates

- A. Services:** The Consultant will obtain preliminary title reports for the nine (9) parcels associated with the West San Carlos Urban Village Streetscape Improvements Project. The Consultant's right of way team shall perform all necessary research for each parcel being acquired. Agents may resolve or oversee resolution of problems relating to unusual circumstances regarding title or ownership and uncover and flaws, noting any exceptions pertaining to property such as mortgage liens, restrictions, easements, and rights of way.

The Consultant will provide capital cost estimates for the impacted right of way for the West San Carlos Urban Village Streetscape Improvements Project which will include current market data to support the acquisition costs. The Consultant will review recent sales data and provide an updated estimate of total acquisition costs based upon permanent and temporary impact areas provided by the City. This information will be summarized in a table and include a total cost for all acquisitions.

- B. Deliverables:** Consultant will provide the following:
1. Nine (9) Preliminary Title Reports:
 - a. Parcel APN 274-41-062;
 - b. Parcel APN 277-04-066;
 - c. Parcel APN 277-14-055;
 - d. Parcel APN 277-16-028;
 - e. Parcel APN 277-15-028;
 - f. Parcel APN 277-17-027;
 - g. Parcel APN 277-16-030;
 - h. Parcel APN 274-15-017;
 - i. Parcel APN 277-20-062; and

2. Capital Cost Estimates.

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date: _____.
- On or before 15 Business Days after receipt of the NTP for this Agreement.

EXHIBIT B: COMPENSATION
 (For Local Assistance Federal-Aid Projects)

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
1	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$920.48
2	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$920.48
3	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$3,258.20
4	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$1,168.86
5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$584.43
6	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$584.43
7	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$16,375.73
8	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$5,259.87
9	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$2,787.73
10	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$2,787.73
11	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work \$5,303.71

Part 2 – Reimbursable Expenses	
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.	<input checked="" type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:
Part 3 – Subconsultant Costs	
<input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.	<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:
Part 4 – Additional Services	
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.	<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:
Maximum Total Compensation (sum of Parts 1 through 4):	
\$56,002.00	

Section 2 – Schedule of Rates and Charges

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

Dokken Engineering	Actual Hourly Rate	Fringe Benefit Rate (%)	General & Administrative Rate (%)	Fee (%)	Combined Rate	Actual Cost Rate \$
Project Manager	\$ 63.00	91.89%	73.76%	10%	175.65%	\$ 173.66

Senior Right of Way Agent (Vanessa Cothran)	\$	50.00	91.89%	73.76%	10%	175.65%	\$	137.83
Senior Right of Way Agent (Jason Andrews)	\$	49.00	91.89%	73.76%	10%	175.65%	\$	135.07
Right of Way Agent	\$	36.00	91.89%	73.76%	10%	175.65%	\$	99.23
Right of Way Assistant	\$	20.00	91.89%	73.76%	10%	175.65%	\$	55.13
Principal in Charge	\$	95.00	91.89%	73.76%	10%	175.65%	\$	261.87
Senior Engineer	\$	70.00	91.89%	73.76%	10%	175.65%	\$	192.96
Associate Engineer	\$	57.00	91.89%	73.76%	10%	175.65%	\$	157.12
Assistant Engineer	\$	39.00	91.89%	73.76%	10%	175.65%	\$	107.50
Senior CAD	\$	64.00	91.89%	73.76%	10%	175.65%	\$	176.42
Engineering Technician	\$	28.00	91.89%	73.76%	10%	175.65%	\$	77.18
Environmental Manager	\$	72.00	91.89%	73.76%	10%	175.65%	\$	198.47
Senior Environmental Planner	\$	53.00	91.89%	73.76%	10%	175.65%	\$	146.09
Associate Environmental Planner	\$	45.00	91.89%	73.76%	10%	175.65%	\$	124.04

Environmental Planner	\$ 36.00	91.89%	73.76%	10%	175.65%	\$ 99.23
Public Outreach	\$ 54.00	91.89%	73.76%	10%	175.65%	\$ 148.85

Section 3 – Additional Terms and Conditions Applicable to Compensation Table:

Notwithstanding anything to the contrary in Section 10 of the Agreement, entitled “Compensation,” the following additional terms and conditions shall apply to manner in which the City pays compensation under this Agreement:

- A. The method of payment for Tasks **N/A** of this Agreement will be based on lump sum. The total lump sum price paid to the Consultant will include compensation for all work and deliverables, including travel and equipment described in Exhibit A of this Agreement, entitled “Scope of Work.”
 - 1. No additional compensation will be paid to the Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the City. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by City.
 - 2. Progress payments will be made monthly in arrears based on the percentage of work completed by the Consultant. If the Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, the City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 19 of this Agreement, entitled “Termination.”
- B. For Tasks No. **1-12**, the Consultant will be reimbursed for hours worked at the hourly rates specified in Section 2 of this Exhibit B. 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 Agreement.
 - 1. In addition, the Consultant will be reimbursed for incurred (actual) direct costs other than salary costs as set forth in this Agreement.
 - 2. Reimbursement for transportation and subsistence costs shall not exceed the rates as set forth in this Agreement.
 - 3. For any milestone cost estimates included in this Agreement, the Consultant shall obtain prior written approval for a revised milestone cost estimate from the City’s Project Manager before exceeding such estimate.

4. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in the Scope of Work, no payment will be made until the deliverable has been satisfactorily completed.
- C. The Consultant shall not commence performance of work or services until this Agreement has been approved by City and notification to proceed has been issued by City's Project Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.
- D. The Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by City's Project Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which the Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the City that include any equipment purchased under the provisions of Section 10.11 of this Agreement, entitled "Equipment Purchase." The final invoice should be submitted within 60-calendar days after completion of the Consultant's work. Invoices shall be mailed to City's Project Manager at the following address:

Trinh Le
200 East Santa Clara Street, 6th Floor Tower
San Jose, California 95113

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

EXHIBIT C: INSURANCE REQUIREMENTS

(For Local Assistance Federal-Aid Projects)

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all Professional Services rendered.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate, coverage to be maintained following completion of work on project for 3 years or, if policy is canceled, extended reporting period to equal the same.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that 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.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to : Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.