



REPORT TO CITY COUNCIL

Approved by:

A handwritten signature in blue ink, appearing to read "Keith Helmuth".

Keith Helmuth, Department Director

A handwritten signature in blue ink, appearing to read "Arnaldo Rodriguez".

Arnaldo Rodriguez, City Manager

Council Meeting of: September 16, 2020

Agenda Number: D-2

SUBJECT:

Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane

RECOMMENDATION:

Adopt a Resolution approving an Agreement with Peters Engineering Group (PEG) in the amount of \$31,075 for professional engineering services and authorizing optional services up to \$3,000 for a Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane, City Project No. TS-29, CDBG No. B18MC060053 ("Project")

SUMMARY:

The Agreement with PEG is for design engineering services for a Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane. Funding for the project comes from the City's Community Development Block Grant (CDBG) and the Local Transportation Fund (LTF). The total amount of the Agreement is \$31,075 including Extra Services up to \$3,000, for the design, preparation of construction drawings, and construction support.

BACKGROUND:

Stadium Road currently consists of two lane roadway but is ultimately planned as a four lane roadway. The road currently consists of two lanes southbound south of Gary Lane, whereas it provides a single lane for northbound traffic.

At crosswalks, four lane roadways are inherently less safe in comparison to two lane roadways. Currently, the crosswalk at Stadium Road and Gary Lane experiences heavy traffic volumes from multiple schools with similar schedules located between Pecan Avenue and Olive Avenue. It is estimated the number of pedestrians using this location exceeds 200 in the morning and afternoon. As a result, the crosswalk is an excellent candidate for enhanced features, such as Pedestrian Hybrid Beacon also known as High Intensity Activated Crosswalk

(HAWK) Signal. The proposed HAWK Signal represents the next level of pedestrian control and is believed to be the most appropriate measure for pedestrian safety at this location. The HAWK Signal notify drivers of pedestrians, thereby creating a safer pedestrian environment.

Staff distributed a Request for Proposal (RFP) on June 12, 2020 through the Builders Exchanges in Fresno, Modesto, and Visalia. The RFP documents were also made available on EBidBoard.com, a projects online listing service for consultants/contractors accessible from the City’s website as well as to other consultants/contractors that regularly access EBidBoard’s website directly. Two proposals were received from interested firms and reviewed by a 3-member selection committee from the Engineering Department. The proposals were reviewed based on qualification, experience, organization, approach, manpower, fee proposal, proposed schedule of work, and completeness of the response to the RFP. The ranking is as shown on Table 1 below.

Table 1: Proposals Ranking	
<i>Ranking</i>	<i>Firm</i>
1	Peters Engineering Group
2	TJKM

The general scope of work for the project consists of the design and preparation of construction drawings, and construction support. A location map of said proposed improvements is provided in attachment 2. The work will begin immediately upon approval of this agreement.

FINANCIAL IMPACT:

There is no fiscal impact to the City’s General Fund.

Funding for the project is in the CDBG Project No. B18MC060053 and LTF programmed in CIP Budget FY 2020/21.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Strategy 101.6: Ensure infrastructure can sustain population growth in the development of the General Plan.

Strategy 121 - Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.

ALTERNATIVES:

Re-advertise the request for proposals, such action will represent a delay of approximately 2-3 months due to the advertisement period, review new proposals, and selecting a consultant.

ATTACHMENTS:

1. Resolution
 - a. Exhibit A – Agreement
 - b. Exhibit A – Scope of Services
 - c. Exhibit B – Cost Proposal
 - d. Exhibit 10-01 – Consultant Proposal DBE Commitment
2. Location Map

ATTACHMENT 1

Council Resolution

RESOLUTION NO. 20-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA
APPROVING AN AGREEMENT WITH PETERS ENGINEERING GROUP IN THE
AMOUNT OF \$31,075 FOR PROFESSIONAL ENGINEERING SERVICES AND
AUTHORIZING OPTIONAL SERVICES UP TO \$3,000 FOR A PEDESTRIAN HYBRID
BEACON AT THE INTERSECTION OF STADIUM ROAD AND GARY LANE, CITY
PROJECT NO. TS-29, CDBG NO. B18MC060053**

WHEREAS, the intersection of Stadium Road and Gary Lane experiences a high volume of pedestrian activity given nearby schools; and

WHEREAS, staff identified a need to improve pedestrian facilities; and

WHEREAS, funding for design engineering of the Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane, City Project No. TS-29, CDBG No. B18MC060053 ("Project") has been included in the proposed 2020/21 Budget and 2020/21 Capital Improvement Program; and

WHEREAS, engineering services by a professional firm is required for the design engineering of the Project; and

WHEREAS, the City published a Request for Proposal on Builders Exchanges in Fresno, Modesto, Visalia, and made available on EBidBoard.com soliciting firms to provide proposal for the Project; and

WHEREAS, Peters Engineering Group (PEG) was selected based on their experience and knowledge of the proposed Project; and

WHEREAS, PEG has the professional skills to perform the necessary services.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The Agreement with Peters Engineering Group for Professional Engineering Services in an amount not to exceed \$31,075, plus \$3,000 for Extra Services as approved by the City Engineer for the Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane, City Project No. TS-29, CDBG No. B18MC060053, a copy of which is attached hereto as Exhibit A and referred to for particulars, is approved..
3. This resolution is effective immediately.

* * * * *

EXHIBIT A

Agreement

CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND

PETERS ENGINEERING GROUP

This Agreement for Consultant Services (“Agreement”) is made and entered into this _____ day of September, 2020 between the City of Madera, a municipal corporation of the State of California, ("CITY"), and Peters Engineering Group ("CONSULTANT").

RECITALS

WHEREAS, CITY plans for the Installation of a Pedestrian Hybrid Beacon at the Intersection of Stadium Road and Gary Lane, City Project No. TS-29, CDBG No. B18MC060053 (“Project”); and

WHEREAS, CITY needs professional engineering services for the Project; and

WHEREAS, CITY engaged in a competitive Request for Proposals process for the desired work; and

WHEREAS, CONSULTANT is qualified and certified to provide the required professional services and is knowledgeable of Federal, State and City standard policies and regulatory requirements; and

WHEREAS, CITY desires to hire CONSULTANT for to provide professional services for the Project.

AGREEMENT

NOW THEREFORE, the Parties incorporate the foregoing recitals and agree as follows:

ARTICLE I. STATEMENT OF WORK

A. Scope of Services

CONSULTANT shall provide the professional services as set forth in Exhibit 'A', Scope of Services, attached hereto and incorporated herein by reference as if fully set forth. CONSULTANT’s Project Manager shall meet with CITY’s Project Manager, as needed, to discuss progress on the project(s)..

E. CITY Obligations

The CITY shall provide CONSULTANT with the following:

- a. Project Manager to work and coordinate with CONSULTANT.
- b. Timely review of all submittals.
- c. Payment of fees for permits.
- d. The data in its possession that is required for CONSULTANT’S performance.

ARTICLE II. COST PROPOSAL.

The work to be performed under this AGREEMENT is described in Article I Statement of Work and the approved CONSULTANT’s Cost Proposal dated (7/10/2020). The approved CONSULTANT’s Cost Proposal is attached hereto as Exhibit B and incorporated by reference as if fully set forth. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT’s expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE III. CONSULTANT’S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the CITY’s Project Manager to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT’s Project Manager shall meet with CITY’s Project Manager, as needed, to discuss progress on the AGREEMENT.

ARTICLE IV. PERFORMANCE PERIOD

- A. The parties shall agree on a Notice to Proceed date. The time for performance of this Agreement shall commence on the Notice to Proceed date and shall end on December 31, 2020, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.
- C. Time is of the essence in the completion of the services covered by this AGREEMENT. Failure of CONSULTANT to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to CONSULTANT or is attributable to CITY, is sufficient cause to terminate this AGREEMENT, at the option of the CITY.

ARTICLE V. INDEPENDENT CONTRACTOR

- A. For the purposes of this Agreement, “CONSULTANT” shall be deemed to include not only CONSULTANT, but also any agent, employee, subcontractor or subconsultant of CONSULTANT. CONSULTANT acknowledges and agrees that at all times, CONSULTANT or any agent or employee of CONSULTANT shall be deemed at all times to be an independent CONSULTANT and is wholly responsible for the manner in which it performs the services and work requested by CITY under this Agreement.
- B. CONSULTANT, its agents, and employees will not represent or hold themselves out to be employees of the CITY at any time. CONSULTANT or any agent or employee of CONSULTANT shall not have employee status with CITY, not be entitled to participate in any plans, arrangements, or

distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees.

- C. CONSULTANT or any agent or employee of CONSULTANT is liable for the acts and omissions of itself, its employees, and its agents. CONSULTANT shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performing services and work, or any agent or employee of CONSULTANT providing same.
- D. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's work only, and not as to the means by which such a result is obtained. CITY does not retain the right to control the means or the method by which CONSULTANT performs work under this Agreement.

ARTICLE VI. ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article I Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and CITY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by CITY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, CITY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by 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. CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Project Manager of itemized invoices. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the CITY. Invoices shall be mailed to CITY's Project Manager at the address in Article XXXIV, Notification.
- E. The total amount payable by CITY shall not exceed \$31,075.00.

ARTICLE VII EXTRA SERVICES

CITY agrees to pay CONSULTANT for extra services not contemplated hereunder as set forth in the Scope of Services or for such services as may be specifically requested by CITY through the City Engineer in writing and agreed to by CONSULTANT for an agreed to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, the City Engineer's authority is limited to expenditures not to exceed the amount of \$3,000.00 dollars (\$X,XXX).

ARTICLE VIII. TERMINATION

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

ARTICLE IX. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE X. RETENTION OF RECORD/AUDITS

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

ARTICLE XI. AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by CITY'S City Manager or designee.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by CITY'S City Manager or designee of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY Project Manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY Project Manager to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations

included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

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

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to CITY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE XII. SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any subconsultants, 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 subconsultants/subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subconsultants/subcontractors is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY Project Manager, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subcontract entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the CITY.
- E. Any substitution of Subconsultants must be approved in writing by the CITY Project Manager in advance of assigning work to a substitute Subconsultant.

ARTICLE XIII. ASSIGNMENT

It is understood that neither party shall assign, sublet, subcontract or transfer its rights or obligations under this Agreement except with the prior written consent of the other party.

ARTICLE XIV. STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region Map Construction 7-8-15.pdf>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at CITY construction sites, at CITY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve CITY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

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

D. Payroll Records

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

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

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

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

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

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

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

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

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

5. The CONSULTANT shall inform CITY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to CITY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by CITY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the CITY Project Manager.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the CITY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
- b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
- c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
- d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

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

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

G. Hours of Labor

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

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subcontract exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to

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

ARTICLE XV. CONFLICT OF INTEREST

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

ARTICLE XVI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XVII. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and

veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVIII. DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to CITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XIX, DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the CITY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is 0%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O1: Consultant Proposal DBE Commitment](#), or in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTS financed in whole or in part with federal funds. The CITY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. 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, which may include, but is not limited to:

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

- E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the CITY's Project Manager.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. 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 CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%)

of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Project Manager.

- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Project Manager within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XX. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

- \$2,000,000 General Liability (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$2,000,000 Automobile Liability combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- Worker's Compensation as required by the State of California and \$1,000,000 Employer's Liability per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- \$1,000,000 Professional Liability (Errors & Omissions) per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

Maintenance of Coverage

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

Notice of Cancellation

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

ARTICLE XXI. INDEMNIFICATION

Indemnity for Professional Liability: When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

ARTICLE XXII. FUNDING REQUIREMENTS

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

- D. CITY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXIII. CHANGE IN TERMS

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

ARTICLE XXIV. CONTINGENT FEE

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

ARTICLE XXV. DISPUTES

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

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of CITY's Project Manager and City Engineer, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by CITY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXVI. INSPECTION OF WORK

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

ARTICLE XXVII. SAFETY

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

ARTICLE XXVIII. OWNERSHIP OF DATA

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

right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXIX. CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by CITY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with CITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXX. CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to CITY's operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than CITY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXXI. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXXII. EVALUATION OF CONSULTANT

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

ARTICLE XXXIII. RETENTION OF FUNDS

No retainage will be withheld by CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXIV. NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CITY OF MADERA

Victor Aldama, Project Manager
Engineering Department
428 E. Yosemite Avenue
Madera, CA 93638

CONSULTANT

John Rowland, Project Manager
Peters Engineering Group
862 Pollasky Avenue
Clovis, CA 93612

ARTICLE XXXIV CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named CITY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently

perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXV SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

* * * * *

CITY OF MADERA

PETERS ENGINEERING GROUP

By: _____
Andrew J. Medellin, Mayor

By: _____
David Peters

Title: _____

By: _____
(Name of Signer)

Title: _____

86-1065316
Taxpayer ID Number

APPROVED AS TO FORM:

By: _____
Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A

Scope of Services

Exhibit A

SCOPE OF SERVICES

Consultant Service Agreement between City of Madera (“CITY”)
and Peters Engineering Group (“CONSULTANT”)

TS-29 PEDESTRIAN HYBRID BEACON AT THE INTERSECTION OF STADIUM ROAD AND GARY
LANE, CITY PROJECT NO. TS-29, CDBG NO. B18MC060053

PROJECT DESCRIPTION

The project in general consists of the installation of Pedestrian Hybrid Beacon and striping improvements at the intersection of Stadium Road and Gary Lane.

Services by CONSULTANT will include the required professional services for the design of the proposed improvements, preparation of the construction documents, and bidding and construction support. CONSULTANT will also identify all right of way needs, including additional land requirements and affected existing improvements and utilities. With the identified right of way needs, the CITY will acquire the necessary right of way.

This project is partially funded by a federal grant and shall comply with all applicable federal requirements. Environmental services to comply with both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) requirements will be completed by the CITY.

It is the intent of this Scope of Services to generally describe the extent of the work contemplated. In arriving at the final design, the CONSULTANT may be required to perform work that is not explicitly identified but is necessary for establishing or substantiating the final design. All such work shall be considered incidental to the project and shall be included in the total fee, unless otherwise specified herein.

PART 1: SCHEMATIC DESIGN

This phase will include the design and the preparation of schematic drawings and documents, including cost estimate. This phase is intended to establish the general scope and layout of the project to assure cost effective and practical solutions for the work identified.

Project Management

The CONSULTANT shall be responsible for project management activities throughout the life of the contract. The scope of comprehensive project management includes, but is not limited to,

- Efficiently managing the project schedule;
- Setting up and facilitating client meetings, interagency meetings, field reviews, other project related meetings (CONSULTANT shall prepare meeting agendas, meeting minutes, identify action items and how they are accounted for, and meeting sign in sheets for all meetings);
- Managing the CONSULTANT team involved in the project (“project team”). Managing the project team includes, but is not limited to, preparing contract paperwork, memos, letters and e-mail, making phone calls and maintaining project files;
- On a monthly basis, the CONSULTANT shall provide a brief written summary of work (typically 1 page long) that has been accomplished in the previous month, anticipated work for the next month and key decisions that need to be made to keep the project on schedule. Invoices shall show the original budget, reallocated budget, amount spent to-date, amount spent this period, and percentage spent to- date for each task.

Survey and Base Map

The CONSULTANT shall be responsible for data collection, mapping necessary for preliminary engineering, design, cost estimates, and right of way impacts.

Utility Coordination

The CONSULTANT shall research and obtain record information from outside agencies and utilities and incorporate that information into the base drawing. CONSULTANT will coordinate with the utility companies to identify any utility conflicts. Existing utilities and their locations will be incorporated into the design drawings. Relocation of identified utility conflicts will be coordinated by CITY.

Utility Coordination

The CONSULTANT shall lead the utility coordination effort. Tasks include, but are not limited to, organizing a list of utility contacts, creating and mailing Utility “A” Letters on CITY letterhead, mapping existing utilities, identifying potential conflicts, designing preliminary utility layouts and identifying possible easements, and preparing high level estimates of relocation costs for the various utility facilities requiring relocation.

Schematic Design Documents

The CONSULTANT shall prepare schematic design documents detailing the scope of work and materials proposed. This may include, but is not limited to:

- A. Geometric layout of the intersection and proposed improvements superimposed on the topography survey file prepared by the CITY and using CITY standard drawing formats.
- B. Proposed Pedestrian Hybrid Beacon location

- C. Identification of potential construction conflicts with existing improvements and utilities, with proposed solutions.
- D. Identification of potential schedule conflicts with proposed solutions.
- E. An estimate of Construction Costs

Deliverables

- 3 copies of Schematic Design Documents
- 3 copies of Technical Reports and Studies
- Copies of all correspondence to Utilities, Agencies and Special Districts, along with their responses

PART 2: DESIGN DEVELOPMENT

Upon approval of the Schematic Design documents and issuance of a written Notice to Proceed, the CONSULTANT shall prepare Design Development Documents of the Project.

Design Development Documents

The CONSULTANT shall prepare design development documents and specifications (approximately at the 60% completion level) detailing the scope of work and materials proposed. This shall include, but is not limited to, proposed pedestrian hybrid beacon configuration, point of service electrical improvements, construction details and technical specifications.

- A. Coordinate with CITY staff, as necessary, for review of the initial submittals.
- B. Meet with CITY staff to review comments and recommendations (if necessary).
- C. Review and revise the 30% design plans to adhere to the CITY's comments and discussions with CITY staff.
- D. Review and revise the 30% preliminary cost estimate to reflect any changes in the design.
- E. Prepare project specifications and special provisions.

Permits

The CONSULTANT shall assist the CITY in obtaining all required permits or approvals from outside utilities or agencies for the planned improvements.

Estimates

CONSULTANT shall develop preliminary construction cost estimates at key milestones. Estimates should be presented on a Caltrans 6-page estimate format or similar and be based on the level of detail appropriate for planning.

Deliverables

- 4 copies of Design Development Documents
- 2 copies of Technical Specifications

- 2 copies of the updated Preliminary Estimate of Construction costs
- Copy of Check set from previous submittal

PART 3: CONSTRUCTION DOCUMENTS

Upon approval of the Design Development documents and issuance of a written Notice to Proceed, the CONSULTANT shall prepare Construction Documents that will include preparing detailed plans, technical specifications and cost estimate.

90% Design Submittal

- Meet with CITY staff, as necessary, for review of the 60% submittal.
- Review and revise the 60% design plans, specifications and cost estimate to incorporate the CITY's comments and discussions with CITY staff.

Deliverables

- 5 copies of 90% Construction Documents
- 5 copies of Technical Specifications
- 2 copies of the updated Preliminary Estimate of Construction costs
- Copy of Check set from previous submittal

100% Design Submittal

- Meet with CITY staff, as necessary, for review of the 90% submittal.
- Review and revise the 90% design plans specifications and cost estimate to incorporate the CITY's comments and discussions with CITY staff.

Deliverables

- 5 copies of 100% Construction Documents
- 5 copies of Technical Specifications
- 2 copies of the updated Preliminary Estimate of Construction costs
- Copy of Check set from previous submittal

Final Construction Documents

- Meet with CITY staff, as necessary, for review of the plans and specifications.
- Prepare final construction drawings, contract specifications, and final construction cost estimate.
- Submit final plans and specifications, and a CD containing the electronic files of the plans and specifications.
- Provide one set of reproducible drawings on mylar and specifications signed and sealed by a licensed civil engineer.

Deliverables

- 1 copy of Construction Drawings
- 1 copy of "camera-ready" Specifications
- 2 copies of the updated Estimate of Construction costs

PART 4: BIDDING SUPPORT

Bidding support services will include assistance during bidding and preparing addenda to the Plans and Specifications.

Assistance with Bidding

The CITY will advertise the project for bidding and distribute the plans to prospective bidders. The CITY will receive any contractor inquiries. The CONSULTANT will assist the CITY as requested during the bidding period. The work may include answering questions, providing consultation and interpretation of the construction documents. Attending pre-bid meeting(s) or bid opening and analysis of bids will also be provided, if requested.

Prepare Addenda

CONSULTANT will assist the CITY as requested in the preparation of addenda to the Plans and Specifications during the bidding period.

PART 5: CONSTRUCTION PHASE AND GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

Construction support services will include administration, attending meetings, reviewing contractor submittals, clarifying the contract documents, preparing change orders, and preparing record drawings. Attending preconstruction meetings will also be provided if requested.

Construction Meetings

The CONSULTANT shall attend construction meetings, including the pre-construction conference, set by the CITY for review of the construction progress and to answer any issues raised during construction.

Construction Observation Services

The CONSULTANT shall perform periodic site visits during construction and report on the progress and quality of the work and compliance with the final plans and specifications.

Shop Drawings

The CONSULTANT shall assist the CITY during construction by reviewing shop drawings and material submittals and recommending acceptance or non-acceptance in accordance with the plans and specifications.

Clarify Construction Documents

The CONSULTANT shall assist the CITY during construction by clarifying and interpreting contract documents to ensure that the project is constructed in accordance with the plans and specifications.

Change Orders

The CONSULTANT shall provide advice and technical support for construction change orders and prepare change order documentation to include, where appropriate, changes in plans and specifications, additional details, an estimate of time, and an estimate of additional cost.

EXHIBIT B

Cost Proposal

**City of Madera, Pedestrian Hybrid Beacon at Intersection of Stadium Road and Gary Lane
Engineering Fee Proposal**

Task	Description	Person-Hours				Other Direct Costs	Total
		Principal Engineer @ \$185 /hr	Senior Civil Engineer @ \$170 /hr	Staff Engineer @ \$120 /hr	Clerical @ \$68 /hr		
1.0	SCHEMATIC DESIGN						
1.1	Initial Project Coordination and Kick-off Meeting	2	4	2	2	\$50	\$1,476
1.2	Field Review		2	4		\$150	\$970
1.3	Utility Data Gathering			4		\$100	\$580
1.4	Mapping		2	10		\$50	\$1,590
1.5	Preliminary Design Drawings (30%)		10	20		\$150	\$4,250
1.6	Application for Electrical Service		2			\$50	\$390
1.7	Project Management and Progress Meetings	1	4			\$100	\$965
	Total Hours	3	24	40	2	Total =	\$10,221
2.0	DESIGN DEVELOPMENT						
2.1	60-percent Design Plans		10	20		\$150	\$4,250
2.2	Project Management and Progress Meetings	1	4			\$100	\$965
	Total Hours	1	14	20	0	Total =	\$5,215
3.0	CONSTRUCTION DOCUMENT						
3.1	90-percent Submittal		6	16		\$100	\$3,040
3.2	100-percent Submittal		4	8		\$100	\$1,740
3.3	Project Management and Progress Meetings	1	4			\$100	\$965
3.4	Final Design Plans and Specifications for Construction		10	6	3	\$100	\$2,724
	Total Hours	1	24	30	3	Total =	\$8,469
	Total Hours (Tasks 1-3)	5	62	90	5	Total =	\$23,905
4.0	BIDDING SUPPORT SERVICES						
4.1	Bidding Support Services		12	4		\$100	\$2,620
	Total Hours (Task 4)	0	12	4	0	Total =	\$2,620
5.0	CONSTRUCTION SUPPORT SERVICES						
5.1	Construction Support Services	2	16	8		\$500	\$4,550
	Total Hours (Task 5)	2	16	8	0	Total =	\$4,550
	Total Hours	7	90	102	5	Total =	\$31,075

Preliminary Construction Cost Estimate: \$250,000



PETERS ENGINEERING GROUP
A CALIFORNIA CORPORATION

HOURLY RATE SCHEDULE
(Effective 1/1/20 to 12/31/20)

<u>CLASSIFICATION</u>	<u>RATE</u>
Principal Civil Engineer	\$185/hr
Senior Civil Engineer	\$170/hr
Civil Engineer	\$145/hr
Land Surveyor	\$135/hr
Staff Engineer	\$120/hr
Draftsperson/Technician/Inspector	\$95/hr
Clerical	\$72/hr
Litigation Support	\$350/hr

REIMBURSABLES SCHEDULE
(Effective 1/1/20 to 12/31/20)

<u>DESCRIPTION</u>	<u>RATE</u>
Mileage	\$0.64/mile
Travel Subsistence	Actual Cost + 10%
Postage	Actual Cost + 10%
Reproduction	Actual Cost + 10%
Subconsultant	Actual Cost + 10%

Work requiring an accelerated schedule is subject to a 25% labor surcharge. Peters Engineering Group will furnish monthly billing for work performed in accordance with previously authorized fees and the above fee schedule. Payments shall be due upon presentation and no later than 30 days from the date of original invoice. Finance charges will apply to unpaid balances.

EXHIBIT 10-01

Consultant Proposal DBE Commitment

ATTACHMENT 2

Location Map

LOCATION MAP

