



CITY OF LAGUNA NIGUEL CITY COUNCIL AGENDA ITEM

TO: Honorable Mayor and Council Members

FROM: Jacki Scott, Public Works Director/City Engineer

DATE: November 19, 2024

SUBJECT: Award of Professional Services Agreement to Mark Thomas & Company, Inc. for the La Paz Road Mobility Enhancements and Permanent Repair Project Approval and Environmental Documentation Phase, Cash Contract No. 24-10

RECOMMENDATION

Staff recommends that the City Council:

1. Award the Professional Services Agreement to Mark Thomas & Company, Inc. to provide design and environmental clearance services for the La Paz Road Mobility Enhancements and Permanent Repair Project Approval and Environmental Documentation Phase (La Paz Road PA&ED), Cash Contract No. 24-10 for a not-to-exceed amount of \$831,653;
2. Approve a not-to-exceed 15% contingency of the total contract in the amount of \$124,748 for unforeseen conditions or extra work and authorize the Public Works Director/City Engineer to approve additional work for a total not-to-exceed amount of \$956,401, if needed; and,
3. Authorize the City Manager to execute the Professional Services Agreement with Mark Thomas & Company, Inc., subject to the City Attorney making non-substantive changes.

BACKGROUND

La Paz Road was constructed in the late 1960's with one lane in each direction, then subsequently widened to two lanes in each direction in the 1990's. Throughout the years, earth movement was noticed with distortions of the pavement, sidewalk, and parkway areas along the Laguna Niguel Regional Park interface near Rancho Niguel Road. To address the earth movement and minimize roadway distortion, nearly seventy 24-inch diameter caissons were installed within the travel lanes of La Paz Road in the 1990's and early 2000's, along with a crib wall at Laguna Niguel Regional Park. Over the years several attempts were made by the City to repair the damaged road, however, roadway movement continued resulting in the significant reduction of lanes in May 2021 and loss of two-way traffic travel along La Paz Road to Crown Valley Parkway in May 2023.

In August 2023, City Council approved a contract with Mark Thomas & Company, Inc. to provide engineering design services for the restoration of interim two-way traffic along La Paz Road (Long-Term Phase II). In February 2024, City Council approved a contract with Palp, Inc. dba Excel Paving Company to construct the La Paz Road Long-Term Phase II Project and construction was completed in August 2024. The Long-Term Phase II Project is an interim measure that reopened two-way traffic on La Paz Road until a permanent repair is designed and constructed, which is anticipated to take three to five years.

In December 2023, the City of Laguna Niguel received grant funding under the Local Transportation Climate Adaptation Program (LTCAP) to design and construct a permanent repair mitigating the landslide and addressing mobility enhancements on La Paz Road, from Aliso Creek Road to Crown Valley Parkway, as shown on the Location Map (Attachment "A").

The LTCAP grant requires a specific process to be followed for each of the La Paz Road Mobility Enhancements and Permanent Repair project phases: environmental clearance, design and construction. The first step, known as the Project Approval and Environmental Documentation (PA&ED) phase, includes the engineering design services for the development of plans, initiation of community engagement and environmental studies. Following approval of the PA&ED phase by Caltrans, the project will proceed onto the final design and construction phases.

The City is also required to comply with Caltrans' Local Assistance Procedures Manual (LAPM). The LAPM states professional services shall be awarded to the best qualified firm, through the issuance of a Request for Proposal (RFP). In accordance with the LAPM and the City's procurement policy, an RFP was prepared, issued and widely circulated for the La Paz Road PA&ED phase on June 13, 2024, with a proposal submission due date of July 17, 2024 (Attachment "B"). By the proposal submittal due date, only one proposal was received. Caltrans strongly discourages and it is not the City's standard practice to award professional services based upon a single proposal.

Therefore, City staff contacted several professional engineering firms to gauge their interest in the project and to determine the reasons for their lack of response to the RFP. Generally, the firms expressed that their lack of response to the La Paz Road PA&ED RFP was due to their limited capacity to take on new work. However, several firms noted that, if provided an additional opportunity, they would reconsider submitting a proposal. Accordingly, the RFP was reissued on August 5, 2024.

ANALYSIS

In response to the reissued RFP, two proposals were received. The La Paz Road PA&ED proposals were evaluated based on the following seven criteria: (1) Understanding of the Scope of Work; (2) Relevant Experience and Client References; (3) Qualifications of Staff; (4) Demonstrated Technical Ability & Schedule Control; (5) Capability of Developing Innovative or Advanced Solutions; (6) Familiarity with State and Federal procurement and project implementation procedures; and (7) Financial Management and Accounting System. The Proposals Evaluation Summary can be found as Attachment "C". The table below displays the consultants and evaluation ranking for all received proposals.

Consultant	Ranking
Mark Thomas & Company, Inc. (Recommended)	1
GHD, Inc.	2

Pursuant to Laguna Niguel Municipal Code Section 3-6-8, professional services agreements shall be awarded based on the demonstrated competence of the service providers, on the service provider's professional qualifications necessary for the satisfactory performance of the services required, and on the fairness and reasonableness of the cost of the services to the City and shall not be awarded solely on the basis of cost. After a thorough review of the proposals received and interviews with the firms, it was determined that Mark Thomas & Company, Inc., was the best qualified firm based on scoring of all criteria. Reference checks of Mark Thomas & Company, Inc. also revealed the firm to be highly regarded, technically proficient and efficient in providing professional civil engineering services.

Pursuant to the LAPM, only the fee envelope of the best qualified firm may be opened. LAPM guidelines do not allow the City to open the fee envelope of any other firms. Upon determination that Mark Thomas & Company, Inc., is the best qualified firm for the La Paz Road PA&ED phase, their fee envelope was opened. In accordance with the LAPM, staff negotiated the fee with Mark Thomas & Company, Inc. to obtain the best overall value for the requested services.

Staff recommends that the City Council award the Professional Services Agreement to Mark Thomas & Company, Inc. for the La Paz Road PA&ED phase in the amount of \$831,653.00. In addition, the Agreement will include a not-to-exceed 15% contingency of the total contact amount in the value of \$124,748.00, for unforeseen conditions or extra work, for a total not-to-exceed amount of \$956,401.00. Due to the specialized knowledge and experience needed to perform the PA&ED phase, staff is recommending a 15% contingency in lieu of the standard 10% contingency for this project. The Professional Services Agreement with Mark Thomas & Company, Inc. can be found as Attachment "D".

ALTERNATIVES CONSIDERED

1. The City Council may direct staff to reject all proposals and readvertise the La Paz Road PA&ED RFP. Staff believes that reissuing the RFP will not result in more desirable proposals.
2. The City Council may decide not to approve the Professional Services Agreement with Mark Thomas & Company, Inc. This alternative is not recommended as the La Paz Road Mobility Enhancements and Permanent Repair Project would be delayed and the associated grant funding may be jeopardized.

FISCAL REVIEW

The Fiscal Year 2024-25 Capital Improvement Program includes \$3.58 million in funding towards the La Paz Road Mobility Enhancements and Permanent Repair Project. Sufficient funding is available for the Professional Services Agreement with Mark Thomas & Company, Inc.

LEGAL REVIEW

The City Attorney's Office has reviewed the Agreement and has approved the document as to form.

CONCLUSION

Staff recommends that the City Council:

1. Award Professional Services Agreement with Mark Thomas & Company, Inc., to provide design and environmental clearance services for the La Paz Road Mobility Enhancements and Permanent Repair Project Approval and Environmental Documentation Phase, Cash Contract No. 24-10 for a not-to-exceed amount of \$831,653.00;
2. Approve a not-to-exceed 15% contingency of the total contract in the amount of \$124,748.00, for unforeseen conditions or extra work, and authorize the Public Works Director/City Engineer to approve additional work for a total not-to-exceed amount of \$956,401.00 if needed; and,
3. Authorize the City Manager to execute the Professional Services Agreement with Mark Thomas & Company, Inc., subject to the City Attorney making non-substantive changes.



Tamara S. Letourneau
City Manager



Jacki Scott
Public Works Director/City Engineer



Harrison Martin
Senior Civil Engineer

Attachments:

- A. Location Map
- B. RFP for La Paz Road Mobility Enhancements and Permanent Repair PAED
- C. Proposals Evaluation Summary
- D. Professional Services Agreement with Mark Thomas & Company, Inc.

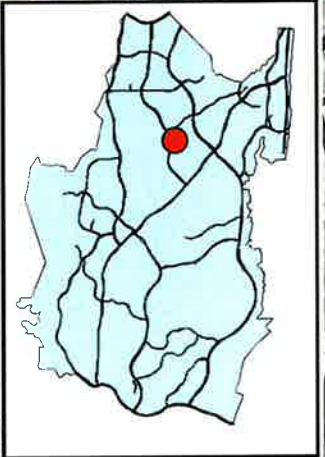
ATTACHMENT A

Location Map

LEGEND



Project Boundary



VICINITY MAP

Aliso Creek Rd

Rancho Niguel Rd

La Paz Rd

Kings Rd

Maxar

Location Map

La Paz Road Permanent Repair Project



ATTACHMENT B

**RFP for La Paz Road Mobility Enhancements and
Permanent Repair Project – PA&ED Phase**



City of Laguna Niguel

**LA PAZ ROAD MOBILITY ENHANCEMENTS AND
PERMANENT REPAIR - PLANNING APPROVAL AND
ENVIRONMENTAL DOCUMENTATION (PAED)**

REQUEST FOR PROPOSALS (RFP)

Issued: August 5, 2024

Due: September 12, 2024, by 4:00 p.m. PDT

RFP Summary	
RFP Title:	La Paz Road Mobility Enhancements and Permanent Repair PAED
Scope of Work:	See Section I-4 (Scope of Work)
RFP Submittal Instructions:	<p>Interested Consultants shall make two submissions:</p> <ol style="list-style-type: none"> 1. Submit to the City of Laguna Niguel: <ul style="list-style-type: none"> • Three (3) hard copies of the Proposal; • One (1) hard copy of the Cost Proposal in a <u>separate</u> sealed envelope. 2. Submit via PlanetBids: <ul style="list-style-type: none"> • One (1) PDF copy of the Proposal through the City's electronic procurement system (PlanetBids) <p>Late Proposals shall not be accepted.</p>
RFP Due Date:	September 12, 2024, by 4:00 p.m. PST
RFP Submittal Requirements:	<p>Your Proposal must include the information described in Section III (Proposal Form and Content) of this RFP.</p> <p>Consultant Proposals will be considered non-responsive if the Proposal does not provide all the information requested in Section III.</p>
Prior to Award of Agreement:	The successful Consultant must submit a Certificate of Insurance and related endorsements that meet the City's criteria as described in the draft Agreement (Attachment "A" of this RFP).
RFP Questions:	<p>Questions regarding this RFP must be submitted through the City's electronic procurement system (PlanetBids). The deadline to submit questions is August 19, 2024, by 12:01 p.m. PDT.</p>
City Contact / Project Manager:	<p>Kathy Nguyen Engineering Services Manager City of Laguna Niguel Phone: (949) 362-4341 Email: KAnguyen@cityoflagunaniguel.org</p>

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SECTION I – PROJECT INFORMATION

I-1. PROJECT BACKGROUND

The City of Laguna Niguel (“City”) is requesting Proposals from qualified consultants to provide services resulting in completion of the required Project Approval and Environmental Documentation (PAED), including preliminary engineering, for the La Paz Road Mobility Enhancements and Permanent Repair improvement project from Aliso Creek Road to Crown Valley Parkway (“Project”). The selected firm shall furnish all expertise, labor, and resources to provide complete services necessary to fulfill the requirements for the specified work detailed within this RFP. Any changes to this RFP shall only be made by written Addenda.

La Paz Road, between Aliso Creek Road and Crown Valley Parkway, is a primary north/south arterial roadway within the City. The existing roadway through the project limits includes two 12-foot wide travel lanes, 5-foot wide Class II bike lanes, and 5-foot wide sidewalks in each direction along with a variable width raised and landscaped median island. On the west side, for a portion of the roadway segment, there is a slope down to the Orange County Laguna Niguel Regional Park and on the east side there is a slope up to residential communities.

La Paz Road was originally constructed in the 1960s as a two-lane roadway. When the City was incorporated in 1989, the City assumed ownership of the roadway. As a result of incremental property development over time, and a 1997 City project, the roadway was widened to its existing cross section. Adjacent to the Regional Park, the widening of the westerly segment included crib-wall retaining structures and compacted fill.

In the late 1990’s, the roadway started to show signs of distress along the boundary with the Regional Park. The City has actively monitored this particular segment of La Paz Road since that time and has periodically observed incremental movement of the roadbed and the slope below. Over time, the roadway has shown signs of earth movement including cracks and settlement in the pavement. In 2001, based upon geotechnical recommendations, the City installed shear pins through this area to slow or stop the earth movement and to hold the roadway in place. In 2008, a series of caissons were also installed. The shear pins and caissons have provided varying degrees of success throughout the years.

In 2022, the City performed an engineering study and geotechnical analysis along La Paz Road between Rancho Niguel Road and Kings Road. The studies included analysis of the existing conditions of the roadway, the westerly slope and underlying soils, to assess

recent and sudden earth movement that damaged the roadway. The City closed the number two southbound lane due to this condition. The goal of the 2022 study was to provide recommendations for the slope and roadway to allow the closed southbound lane to be re-opened to traffic. The underlying earth movement also had to be addressed so that the roadway could be adequately repaired for the long term. Subsurface evaluations consisted of drilling, logging, and borings. Slope stability analyses were then performed to calculate the slope stability factors of safety. This work resulted in the following recommendations to mitigate the observed slope movement: 1) Shear Pin/Tieback System – Construct two rows of 70-foot-deep shear pins with tiebacks or 2) Slope Removal – Remove 20 feet of existing material at the top of slope.

In 2023, the City observed more severe movement of the pavement and sidewalk within the area adjacent to the Regional Park. This movement caused significant damage to the roadbed and sidewalk on the westerly side of La Paz Road. Several attempts by the City to repair the damaged road were unsuccessful and the City made the decision to close both southbound lanes, bikeway and sidewalk to vehicular and non-vehicular traffic as of May 2023. An area wide traffic detour for southerly bound traffic was then implemented, which is still in effect as of the issuance of this RFP. This condition and the desire to enhance mobility options in the area prompted the development of the LTCAP Grant Application for the Climate Resiliency Efforts for La Paz Road (Aliso Creek Road to Crown Valley Parkway) Project.

The La Paz Road Mobility Enhancements and Permanent Repair Project will consist of a road diet to reduce the number of lanes in each direction from two to one; geotechnical mitigation; the transformation of the existing Class II bicycle lanes to Class IV protected bikeways; pedestrian facility improvements; traffic flow improvements; and the enhancement of landscaping and lighting facilities. This Project will promote climate resilience and a mode shift by offering inviting bicycle facilities and pedestrian access separated from vehicular traffic. The Project will reduce greenhouse gas (GHG) emissions and is expected to decrease vehicle miles traveled (VMT).

An interim phase construction work effort is under construction during summer 2024 to provide a temporary southbound travel lane on the easterly, northbound half, of the roadway, between Niguel Road and King's Road, to relieve the current traffic detour. The temporary improvements will have no bearing on the final Project solution.

An independent project by the Moulton Niguel Water District, MNWD, for the construction of two sewer force-mains through the Regional Park and immediately adjacent to some of the Project limits will entail geotechnical stability work. The impact of this MNWD project on the City's La Paz Road Project shall be considered in the PAED.

The successful completion of this PAED phase will allow the City to subsequently proceed with the work effort for the Plans, Specifications, Estimate (PSE) and Right of Way acquisition, if any, phase. All work products of this PAED phase shall become the property of the City of Laguna Niguel and the Consultant shall release all claims to said work product upon completion of the Scope of Work herein.

The PAED phase is funded with State only and Local funds. The related and future PSE and Construction phases will be funded with Federal funds and Local funds. Therefore, all procurement of professional services and construction work, including for this PAED, shall conform to both Federal and State requirements. The Consultant Selection Process will be consistent with Caltrans Local Assistance Procedure Manual, Chapter 10, Consultant Selection. Should an award of agreement be made, the selected consultant will enter into the City's standard Professional Services Agreement, as amended to include all related Federal regulations, to provide the proposed services.

Note that since the funding for the PAED phase is State and Local only funding, there is no Disadvantaged Business Enterprise (DBE) goal. However, Consultants are encouraged to support local and small businesses on their Team.

I-2. CITY BACKGROUND

The City of Laguna Niguel is a 14.72 square mile bedroom community with a population of about 67,000 located in Orange County, California. The City was incorporated on December 1, 1989, as a master planned community. The City is known for its mild coastal climate, low crime rate, and its numerous parks and public trails.

I-3. PROJECT GOALS

The completion of the PAED and preliminary engineering shall support the PSE phase of this project, ultimately leading to the completion of construction of the Project.

The PAED shall attain the following goals:

- Define the environmental study area and complete necessary environmental analysis.
- Comply with Chapter 6 of the Caltrans Local Assistance Procedure Manual leading to Project NEPA clearance and Project approval by the District Local Assistance Engineer.

- Comply with City of Laguna Niguel planning requirements for environmental clearance as defined in the “City of Laguna Niguel CEQA Manual, February 24, 2023”, including the Environmental Checklist Form, resulting in Project CEQA clearance and Project approval by the Community Development Director and City Council.
- Engage and solicit input with two-way communications from community stakeholders.
- Complete topographic survey, base maps and preliminary engineering for the Project necessary for all phases of this Project.
- Identify opportunities for enhanced active transportation, incorporate local and regional bikeway planning and connectivity into the Project limits, and develop a comprehensive understanding of, and solution to, pedestrian needs and connectivity within the Project limits. Pedestrian crossing opportunities and access to the Regional Park is to be prominently considered.
- Evaluate the benefits of, and make recommendations for, the addition of one or more roundabouts at Project intersections to improve circulation and traffic safety.
- Engage the Institute for Sustainable Infrastructure Envision Rating System to develop the right project and to set up the future phases to be recognized for achieving the highest level of an Envision Award.
- Prepare the justification and documentation in support of the approval of an application to the Orange County Transportation Authority (OCTA) to reclassify the Project limits from a Primary Arterial Highway to a divided Collector Roadway.

I-4. SCOPE OF WORK

Qualified Consultants must have experience with and have completed multiple PAED projects including preliminary engineering. The following tasks and deliverables are required. Consultant may offer additional services which will improve the furtherance of the goals of this Project.

Task 1: Project Management

Provide project management for the entire duration of the Project and coordinate with the City and other key stakeholders. The Consultant shall conduct a project kick-off meeting with the City designated consultant Program Manager and City staff (Public Works and Community Development). At the kick-off meeting, key members will be introduced, and the following will be discussed: scope of work, project approach, work plan, deliverables, schedule, public outreach plan, and additional requests for information.

The Consultant shall conduct monthly progress meetings with the Program Manager and City staff. The Consultant will schedule these meetings and provide meeting minutes

within 10 calendar days of the meeting conclusion for all participants. The consultant should expect to hold the kickoff meeting within 30-days of the awarding of the Agreement. This task shall also include attendance and presentation at one (1) Traffic and Transportation Commission Meeting and one (1) City Council Meeting for final Project presentation and approval.

The Consultant shall provide a robust project controls and financial management system to keep the project on schedule and budget, to the City's satisfaction.

The PAED shall be completed in an expeditious timeframe with a goal of completion in a nine-month period, post issuance of the Notice to Proceed to the Consultant.

Deliverables:

- 1) *Project scope, schedule and controls.*
- 2) *Project kick-off and progress meeting agendas, meeting materials, and meeting notes.*
- 3) *Prepare, attend, and present at Traffic and Transportation Commission and City Council meetings.*
- 4) *Additional data/information request; informational materials (e.g., handouts, exhibits, data tables, etc.) for the meetings listed above.*

Task 2: Preliminary Engineering

- a) Research & Review Available Data - Consultant will compile and review all related records and documents from the City as are available. Document research to include the County, City, utility, and other pertinent record holders (if any). Records should include existing street, signal, storm drain, gas, electric, communications, sewer, and water main improvement plans, traffic volume data, topographic data maps, geotechnical reports, environmental reports, street and utility plans, subdivision maps, survey centerline and private property monument data, and other pertinent information.

Deliverables:

- 1) *A compilation of all findings.*
 - 2) *All records submitted to the City upon Project completion.*
- b) Utility Research & Notification - Consultant will conduct a detailed local utility investigation to confirm the most recent contacts for all affected utilities and cross-reference the findings with any information provided by the City. Each company will be initially contacted with a first utility notice letter to inform them of the upcoming project and request information pertaining to their utilities such as verification of the sizes, depths, and locations of their underground and aboveground lines, facilities, and substructures within the project vicinity. Once the requested information is received from the utility owners, the consultant will cross-check the plotted locations with field review information to ensure the existing utility lines are shown in their proper locations. The compiled information will be

integrated into the preliminary engineering plans and provided to all affected utility owners with the second utility notification letter seeking confirmation of utility information.

Consultant shall hold at least one group utility owners meeting to confirm everyone's understanding of the project and that all data has been collected. Consultant shall ensure that the PAED is compatible with all utilities to be impacted or otherwise modified within the project area. Consultant will meet with the affected utility owners throughout the development of the PAED as needed. If it is determined upon completing the PAED that the utility research data gathered is not sufficient to accurately determine the locations of the utilities or there is a concern that conflicts may exist that require field excavation verification, the recommendation will be made for utility potholing to be conducted prior to construction. Consultant shall develop a Risk Register for the utility and related project issues.

Deliverables:

- 1) *Figures/Maps Documenting Research Results.*
- 2) *Contact Letters/Correspondence.*
- 3) *First Utility Contact Letter.*
- 4) *Utility Summary Conflict Exhibit.*
- 5) *Summary (or checklist) Summarizing Research Source and Findings.*
- 6) *A Risk Register.*
- 7) *Minutes of the group utility owner meeting(s)*

- c) Topographic Survey – Consultant will perform a Topographic Survey of the entire Project area through a combination of field survey and aerial photogrammetry meeting design level survey standards and based on USGS NAD83 and NAVD88 datums. Survey cross-sections are optional at this stage of this Project but shall be offered as an available service. The consultant shall establish survey ground control for aerial photogrammetry and topography and future use by others. Survey data shall extend outside of Project limits at a sufficient distance to plot joins to existing improvements. The consultant shall confirm the limits of the aerial topographic mapping with City prior to performing this task.

All surveys are to be performed according to the current "Caltrans Surveys Manual", the California Spatial Reference Network and the Orange County Surveyor standards. Work not covered by the manuals shall be performed in accordance with accepted professional surveying standards as typically approved by Caltrans. Mapping shall be developed in accordance with the current Caltrans surveying standards and the standards of the Orange County Surveyor. Survey information shall use latest state plane coordinates and elevations for future use during final design. Assumed coordinates and elevations shall not be used.

Deliverables:

- 1) *One Reproducible Original of the Aerial Topographic Base Map*
- 2) *Electronic File of the Aerial Topographic Base Map*
- 3) *Digital Orthophoto TIFF file(s)*

- 4) *Survey control datum*
- 5) *Optional cross-section survey*

d) **Site Evaluation** - Consultant will schedule a site inspection and evaluation. Consultant will verify records drawings and data, evaluate pavement and concrete infrastructure conditions, identify proposed improvements and requirements for private property improvements, and inventory existing manholes, valves, pull boxes, survey monuments, roadway signage, existing pavement markings and other surface features. Street level photographs should also be taken of key project areas.

e) **Environmental Study Area** – Consultant shall work with City Staff to define the Environmental Study Area (ESA) for NEPA and CEQA compliance. The Consultant shall perform environmental evaluations of all potential environmental impacts of the Project. Should the ESA be adjusted, Consultant shall perform the additional environmental clearance studies without further consideration or compensation.

Deliverables:

- 1) *Record of ESA determination.*
- 2) *Mapping of ESA.*

f) **Geotechnical Investigation** – Consultant will be provided the geotechnical investigations undertaken by the City's retained geotechnical engineering firm in the reach of the project between Rancho Niguel Road and Kings Road. The Consultant shall conduct additional geotechnical investigations of the proposed limits of the project as necessary to complete the PAED and to make preliminary recommendations of construction solutions for the successful completion of the Project.

Deliverables:

- 1) *Geotechnical Report as a part of the PAED.*

g) **Alternatives Analysis** – Consultant shall consider alternatives to the project and within the project for the environmental assessment. Additionally, Consultant shall present at least three alternative project configurations meeting the intentions of the project and perform a cost-benefit analysis and risk analysis of each project alternative. Following public outreach and consultations with stakeholders, identify the project preferred alternative.

Deliverables:

- 1) *Alternatives*
- 2) *Cost-benefit analysis*
- 3) *Risk analysis*
- 4) *Preferred Alternative and justification report*

h) **Prepare Preliminary Design Plans** – Consultant shall perform the following:

- 1) Create Design Base Sheets - Consultant will provide base sheets that are prepared through the compilation of the researched records, aerial photographs, topographic survey data, optional cross-sections, if prepared, site visit findings, and utility records obtained from plans from utility companies. All plans shall be developed at 1" = 40' scale using the latest AutoCAD Civil 3D software and drafted using conventional line style and text annotation stored as a separate layer and meeting the standards of the City of Laguna Niguel. The Base Sheets shall match the perimeter of the Environmental Analysis Area as needed for the PAED, NEPA clearance and CEQA clearance. Base sheets shall be 24" by 36" in size.
- 2) Develop 35% Design Plans for the Preferred Alternative - Utilizing the Base Sheets, prepare the preliminary engineering plans for the Project in accordance with the Caltrans Highway Design Manual, California Manual of Uniform Traffic Control Devices; Standard Specifications for Public Works Construction (Green Book); Greenbook Standard Plans; and City Codes and Standards. Efforts under this task shall include but not be limited to: (1) preliminary geometric plans and profiles; (2) existing utility information; (3) hydrology studies and hydraulic analysis as needed to identify the need for changes to or additional drainage facilities; (4) traffic control; and (5) water quality management plans/compliance with NPDES. Information shown on the plans shall include: (1) assessor parcel numbers; (2) high risk and low risk utilities; (3) existing and proposed right-of-way lines; (4) limits of access control; (5) property ingress modifications; (6) project limits; (7) mobility configurations; (8) bicycle and pedestrian facilities; (9) roundabouts; (10) geotechnical recommendations/grading plans; and (11) local roadway modifications.

The Consultant shall verify the proposed improvements can be constructed within the existing or proposed roadway right of way. The Consultant shall also identify any modifications to existing improvements required to construct the Project.

In addition to the preliminary engineering plans, photo-simulations and easy to read concept plans shall be created as a part of these tasks. These will be intended for use at the public meetings and should be easy to read and visualize the proposed alternatives. A "fly-by" presentation shall also be provided.

All aspects of the Project shall comply with federal 2010 ADA Standards, Title 24 of the California Code of Regulations (which contains California building regulations), and local code, whichever provides the greatest access. Private-funded improvements within the public Right of Way are also required to comply with the federal 2010 ADA Standards or with Title 24, whichever code

offers the greatest access or protection to individuals with disabilities. All new and altered pedestrian facilities such as, but not limited to, sidewalks, crosswalks, pedestrian overpasses, underpasses, and ramps must be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all federal-aid projects.

- 3) Right of Way. Identify the necessary or probable right of way acquisition needs to allow for construction of the project.
- 4) Probable Construction Cost Estimates – Consultant will assess viable design alternatives and identify their probable construction cost estimates, considering the current cost environment and the expectation the project will not begin construction for up to 24 months. Consultant will assess construction costs, utility relocation costs, right of way acquisition costs and impacts to residents and businesses associated with each design option and develop an accurate cost-benefit analysis for any alternatives.

Deliverables:

- 1) Preliminary geometric plans and profiles*
- 2) Exhibits supporting the constructability of the project*
- 3) Presentation materials for community and stakeholder outreach meetings*
- 4) Photo simulations (assume 3) and “fly-by” presentation*
- 5) Probable Construction Cost Estimates*
- 6) Right of way acquisition costs*

Task 3: Community Engagement

Stakeholder engagement is critical to the success of this Project. The Consultant shall utilize relevant and comprehensive strategies to receive feedback from as many residents in the community as feasible. It is expected the Consultant will have an ongoing dialogue with the stakeholders for the duration of the Project. The Consultant shall facilitate community engagement events required in this RFP in consultation with the City Staff and the City’s Community Relations Consultant.

The Consultant shall propose a Public Outreach Plan that includes at least three events and a schedule to accomplish the community engagement tasks. The Proposal shall state which events are proposed to be virtual. The Public Outreach Plan shall include a strategy to inform the community of the Project (see the City’s website for currently provided information), provide regular updates, and offer channels for participation and feedback. Consultant shall provide a hosted two-way communication portal for public input and response. Consultant shall carefully document all public feedback and response thereto. The Public Outreach Plan shall include multiple methods of communication to ensure participation from stakeholders. Consultant shall submit all public outreach material to the City for review and modification before the material is posted by the City or by the

Consultant. The City will assist with mailings (if any) and placing materials on the City's website.

Deliverables:

- 1) *Community and stakeholder outreach plan.*
- 2) *Community and stakeholder outreach implementation – documentation of two-way communications.*
- 3) *Materials with graphics, information for education and Project implementation.*
- 4) *Support of the City's project website*
- 5) *In-person meeting attendance at community and stakeholder outreach meetings.*

Task 4: Project Approval and Environmental Documentation Report

Consultant shall complete all aspects of the PAED requirements as defined in Chapter 6 of the Local Assistance Procedure Manual and any additional information required by Caltrans leading to the approval of the PAED and NEPA clearance. Consultant shall also complete all aspects of the City of Laguna Niguel CEQA Manual leading to the CEQA clearance. The Consultant shall prepare the appropriate environmental clearance document, including any necessary environmental studies and Mitigation Monitoring and Reporting Program.

The consultant shall distribute and coordinate the environmental clearance document submittal, including the filing of Notice of Intent, Notice of Completion, and Notice of Determination, payment of all applicable filing fees, and mailing of all public notices to stakeholders and regulatory agencies. The consultant shall be responsible for the overall management and supervision of the environmental review, including consultation with the appropriate state, tribal councils and local agencies.

Consultant shall complete the following studies:

- a) **Traffic and Alternatives Analysis** – Consultant shall prepare a traffic study consistent with the City of Laguna Niguel Transportation Assessment Guidelines to 1) meet the needs of the environmental analysis, 2) be used in an application to the Orange County Transportation Authority (OCTA) to downgrade La Paz Road, from Aliso Creek Road to Crown Valley Parkway, on the County of Orange Master Plan of Arterial Highways (MPAH), from a Primary Arterial Highway to a divided Collector Roadway (Commuter Street in the Laguna Niguel Circulation Element of the General Plan), 3) provide all required documentation to amend the City's General Plan Circulation Element and 4) support recommendations for bicycle facilities, pedestrian facilities and traffic control and flow options, including roundabouts.

Using available data, the consultant shall document the current daily roadway conditions on La Paz Road for peak hour conditions. Consultant shall also provide all additional traffic data collection services necessary to define the current and future traffic conditions as needed to complete the Traffic and Alternatives Analysis. Traffic projections for near-term and General Plan build-out conditions shall be analyzed to document how the proposed improvements will function in the

near term and the future. As part of this analysis, consultant shall develop three (3) alternatives to meet California Environmental Quality Act (CEQA) needs. A vehicle-miles traveled (VMT) analysis and a greenhouse gas emissions analysis shall be included in the traffic analysis. The consultant shall also prepare an opportunities and constraints analysis to help evaluate the various parameters of the Project. Opportunities and constraints may include, but are not limited to, right of way, order of magnitude costs, engineering challenges, value engineering, etc. The analysis will include a written summary of potential connection points to residences, major transportation hubs, the Regional Park, other parks/open spaces, businesses, schools/colleges and universities, major urban centers, and other key community destinations within a reasonable walking/biking distance. It will also include graphic representations overlay on aerial photographs.

Deliverables:

- 1) *Traffic Analysis Memorandum*
- 2) *Opportunities and Constraints Analysis to be incorporated into the PAED.*

- b) Phase I Initial Site Assessment: This task shall include preparing the Phase I Initial Site Assessment (ISA). The ISA shall include all pertinent information regarding listed hazardous waste and potential hazardous waste sites in the vicinity of the Project. During the preparation of the ISA, the Consultant shall review published lists of hazardous waste sites and search as necessary available files of federal, state, regional, and local agencies.
- c) Other Environmental Assessments – Consultant shall complete Environmental Checklist Forms and perform all additional studies/evaluations of any environmentally sensitive conditions with reasonably anticipated adverse environmental impacts, as needed, which may include, but not be limited to, Air Quality Analysis, Noise studies, Paleontological and Archaeological studies and others. Said Checklist work and additional studies/evaluations shall fulfill the completion and approval, by both Caltrans and the City, of both 1) the Project's NEPA clearance in full compliance with Chapter 6 of the Local Assistance Procedure Manual, other related guidance documents and Federal Law and 2) CEQA clearance meeting the City's standards and State Law.

Consultant shall first prepare a Preliminary Environmental Analysis Report (PEAR) following the procedures set forth in the Project Development Procedures Manual (PDPM), as applicable. The content and format requirements of environmental technical studies/reports and NEPA documents prepared in support of the project must follow the guidance set forth in the Caltrans Standard Environmental Reference (SER) available at <http://www.dot.ca.gov/ser/> and Federal Law.

The content and format requirements of environmental technical studies/reports and CEQA documents prepared in support of the project must follow the City's CEQA Manual and State Law.

Consultant shall recommend and prepare the type of environmental determination, as minimally necessary, with all supporting studies, to approve the Project NEPA and Project CEQA clearance and approvals by Caltrans and City. Consultant shall prosecute the NEPA and CEQA approvals to completion.

Deliverables:

- 1) *NEPA Environmental Checklist Form and recommended environmental determination.*
- 2) *CEQA Environmental Checklist Form and recommended environmental determination.*
- 3) *Traffic and Alternatives Analysis.*
- 4) *Initial Site Assessment*
- 5) *Other Environmental studies/evaluations of anticipated Project adverse environmental impacts to be incorporated into the PAED.*
- 6) *PEAR report.*
- 7) *PAED report.*
- 8) *Local Assistance Procedure Manual NEPA Forms as approved by Caltrans.*
- 9) *City CEQA Forms as approved by City.*
- 10) *The environmental clearance documents with supporting studies for both NEPA and CEQA*
- 11) *Communications with interest groups and stakeholders.*
- 12) *Caltrans approved NEPA determination.*
- 13) *City approved CEQA determination.*
- 14) *Mitigation Monitoring and Reporting Program (if necessary)*
- 15) *Notice of Intent, Notice of Completion, Notice of Determination and Recorded/published notices as required by practice or law.*

Task 5: Envision Rating System

Consultant shall register the Project with the Institute of Sustainable Infrastructure (ISI) and complete all steps and rating system checklists, with full documentation, consistent with the requirements of the ISI, to utilize the Envision Rating System for the Project in the preparation of the PAED and make recommendations for its continued use throughout the PSE and Construction phases. Use of ISA shall seek to qualify this Project for the highest Envision award at completion of construction.

Deliverables:

- 1) *Documentation of the use of the Envision Rating System.*
- 2) *Documentation of one or more Envision Sustainability Professional(s) working on the Project.*

Task 6: Coordination with OCTA regarding MPAH

The Project development process and alternatives analysis will likely determine a different lane configuration for La Paz Road, from Aliso Creek Road to Crown Valley Parkway, than is currently reflected on the Master Plan of Arterial Highways (MPAH). This roadway segment is currently classified as a four-lane Primary Arterial Highway per the MPAH administered by Orange County Transportation Authority (OCTA). If the alternative with

less than four vehicle lanes is determined to be the Preferred Alternative, the Consultant shall provide all necessary technical studies, documentation and support for the City submittal to OCTA, in a form meeting the approval of OCTA, of a request resulting in an MPAH Amendment modifying the City's La Paz Road MPAH commitments. The Traffic and Alternatives Analysis is expected to provide the technical information required for this task and lead to the approval of the MPAH amendment.

Deliverables:

- 1) Memorandum, technical studies, documentation and findings for MPAH Amendment*
- 2) Coordination with OCTA and prosecution of the City's request to reclassify La Paz Road leading to approval of the MPAH Amendment*

Task 7: Access to City Reports and Resources

Consultant shall review the below described reference documents as are being provided as additional documents on PlanetBids.

1. La Paz Road Long-term Phase II Improvement Plans, November 17, 2023, by Mark Thomas.
2. La Paz Road LTCAP Grant Application, July 31, 2023, by City.
3. Predesign Report and plans for La Paz Road Earth Movement Evaluation, April 2023 by Psomas.
4. City of Laguna Niguel CEQA Manual, February 24, 2023, by City.
5. Summary Report, Limited Geotechnical Distress Evaluation of a Portion of La Paz Road, Laguna Niguel, California, November 16, 2018, by LGC.
6. Limited Subsurface Geotechnical Investigation of Distressed Southbound Street and Shoulder Improvements Between Approximate Streets Stations of 38+58 and 40+44, La Paz Road, Laguna Niguel, California, January 31, 2007, by GMU.
7. Crib Wall Design for La Paz Road, August 24, 1993, by Nu-Lock.
8. Geotechnical Study for the Proposed Widening of La Paz Road from Laguna Niguel Regional Park to Kings Road, Laguna Niguel, California, January 11, 1993, by M&T Agra.
9. Tract 9674 – La Paz Road Improvement Plans, May 15, 1980, by John G. Goetten.
10. Tract 13005 – La Paz Road Improvement Plans, December 8, 1987, by Hunsaker.
11. Tract 12969 & 13229 – La Paz Road Improvement Plans, May 11, 1988, by John G. Goetten.

SECTION II – RFP PROCESS

II-1. RFP TIMELINE

The following is the anticipated RFP Timeline. The City reserves the right to make changes to the RFP Timeline for selection and award of the Agreement. Any changes in this RFP will be made by written Addendum.

Milestone	Date
RFP Issued	August 5, 2024
Deadline for RFP Questions	August 19, 2024, 12:01 pm
City Response to RFP Questions	September 3, 2024
RFP Submittal Deadline ("RFP Due Date")	September 12, 2024, 4:00 pm
Tentative Interviews Schedule	September 2024
Tentative Award of Agreement	October 2024

II-2. RFP QUESTIONS AND RESPONSES

Consultants interested in submitting a Proposal are asked not to contact other City staff or City Council Members in connection with the RFP prior to City Council award of the Agreement.

Please submit any questions pertaining to the RFP through the City's electronic procurement system (PlanetBids) on or before August 19, 2024, by 12:01 p.m. PDT. No questions will be accepted via phone or email. Once all questions are received, the City will summarize all questions and their responses in an addendum to the RFP. The addendum will be posted to the City's electronic procurement system (PlanetBids): <https://pbsystem.planetbids.com>.

In case additional clarifications need to be provided after the question response posting date and before the RFP due date, the City will post additional addenda to PlanetBids.

Each Consultant is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in its Proposal the receipt of each addendum as part of its Proposal. Failure of Consultant to acknowledge receipt of all addenda as part of its Proposal may result in rejection of its Proposal.

II-3. RFP DUE DATE AND OPENING

Proposals are due on or before the RFP due date, September 12, 2024, by 4:00 p.m. PST.

Proposals will be addressed to the City Contact:

City of Laguna Niguel (City Hall)
c/o Kathy Nguyen
30111 Crown Valley Parkway
Laguna Niguel, CA 92677

Consultant shall deliver the Proposal in two ways as described below.

1. Consultant shall deliver the Proposal Package to the City either in person or by mail in one (1) sealed package marked on the outside, **"PROPOSAL FOR LA PAZ ROAD PAED, DO NOT OPEN WITH REGULAR MAIL."**

Consultant shall include three (3) hard copies of the Proposal in the sealed package. Consultant shall also include one (1) hard copy of the Cost Proposal in a separate sealed envelope within the sealed package, bearing the Consultant's name and address, and clearly marked as follows: **"COST PROPOSAL FOR LA PAZ ROAD PAED."**

2. Consultant shall also submit a PDF copy of the Proposal through PlanetBids. Do not submit the fee schedule through this portal.

It is the sole responsibility of the Consultant to ensure the Proposal was received by the RFP due date and time both at City Offices and at Planetbids. Late Proposals will not be accepted. The City will not publicly open or read Proposals aloud.

II-4. RFP EVALUATION PROCESS

This RFP Evaluation Process shall be governed by Chapter 10 of the Caltrans Local Assistance Procedure Manual and City procedures. The evaluation and selection process are based on consideration of various factors as described below. Accordingly, the City reserves the right to waive technical errors, alter submission dates, issue subsequent requests for information, etc.

An Evaluation Committee comprised of City staff will review and score all Proposals based on the Evaluation criteria stated below. The Consultant selection will be made based on the recommendation of the team determination of the best qualified Consultant and presented to the City Council for approval to award the Agreement. The individual rating and/or evaluation forms prepared by the team members will not be revealed; however, a summary of the evaluation results will be presented to the City Council.

During the evaluation process, the Committee may, at its discretion, request three or more Consultants to make oral presentations by participating in an interview. Interviews may be in-person or may be virtual at the City's discretion. Such presentations will give Consultants a chance to answer any questions the Committee may have on their Proposal. Not all Consultants may be asked to make such oral presentations. The interview process will focus on the key personnel proposed by the Consultant to perform work for this Project, the Scope of Work and the pertinent Consultant experience. The City may also request the presence of the Consultant's principal-in-charge, if necessary.

The City of Laguna Niguel will review and evaluate the Proposals based on the following factors and scoring criteria to select the most qualified Consultant: Please see next page.

<u>PROPOSAL SCORING:</u>		
Criteria	Max points	Score
Understanding of the Scope of Work	25	
Experience with similar Work and review of References	20	
Qualifications of Staff	20	
Demonstrated Technical Ability & Schedule Control	20	
Capability of developing innovative or advanced solutions	5	
Familiarity with State and Federal procurement and project implementation procedures	5	
Financial Management and Accounting System	5	
Total	100	

1. Understanding of the Scope of Work – Consultant demonstrates a complete understanding of the scope of work and the work site.
2. Experiences with similar kinds of Work and review of References – Consultant demonstrates experience with the same scope of work as defined in this RFP and provides references to confirm said experience.
3. Qualifications of Staff – The designated Project Manager must be able to perform as the sole point of contact and provide day-to-day direction to team members and

subconsultants. Expertise and background of the Project Manager and each key team member, their availability to participate on this Project, and overall firm capabilities to meet the needs of the Project and City will be evaluated.

4. Demonstrated Technical Ability and Schedule - The proposed Project approach and services the Consultant is capable of providing and the approach taken to meet the needs of the City. The Consultant understands the City's specific issues and can identify and meet the Project challenges. Strategies to provide effective public outreach should also be demonstrated. The Consultant provides a Project schedule, including public outreach events, and describes techniques to monitor schedule and complete the Project within the proposed time frame.
5. Capability of developing innovative or advanced solutions – Demonstrated ability to present alternative solutions to attain the Project outcomes with shorter timeframes and reduced costs.
6. Familiarity with State and Federal procurement and project implementation procedures – Consultant demonstrates experience with and successful implementation of all required State and Federal regulations related to the Work of this Project.
7. Financial Responsibility – Consultant demonstrates the financial capacity to perform the work and to follow financial reporting requirements as required by State and Federal regulations. Contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31.

Selection by the City shall be based on demonstrated competence, on the professional qualifications necessary for the satisfactory performance of the services required, and the schedule of work. The City and selected Consultant shall then enter a review of their proposed professional fees. Award of the Agreement will be made to ensure that such services are engaged based on demonstrated experience and qualifications at fair and reasonable prices to the City.

II-5. REQUEST FOR COUNCIL ACTION

Following evaluation and rating by the City's Evaluation Committee, the City will recommend a Consultant for award of the Agreement at a City Council Meeting. The selected Consultant will enter into the Agreement with the City based upon the contents of the RFP and the Consultant's Proposal. Consultants not chosen will be informed following the City Council Meeting.

II-6. EXECUTION OF AGREEMENT

A sample Professional Services Agreement is attached herein as Attachment "A". The term of the Agreement will begin once the Agreement is fully executed, and a W9 and a certificate of insurance and related insurance endorsements that meet the City's requirements have been received and approved.

II-7. ACCEPTANCE OF AGREEMENT AND TERM

After the City Council awards the Agreement, the City and Consultant shall work to fully execute the Professional Services Agreement (Attachment "A"). The term of the Professional Services Agreement will be for one year or until this RFP's Scope of Work is completed.

SECTION III – PROPOSAL FORM AND CONTENT

III-1. GENERAL INFORMATION

The City reserves the right to retain all Proposals submitted. Submission of a Proposal indicates Consultant's acceptance of the conditions contained in this RFP, unless clearly and specifically noted in the Proposal submitted and confirmed in the agreement between the City and the Consultant selected.

The City reserves the right to reject any or all Proposals, in whole or part, to waive any informality in any Proposal, and to accept the Proposal which, in its discretion, is in the best interest of the City. Any Consultant may withdraw their Proposal, without obligation, before the RFP due date. A withdrawal will not be effective unless made in writing to the City Contact prior to the RFP due date. Proposals may later be referred to the City Council for appropriate action.

Proposals must be valid for a minimum of 120 days.

III-2. PROPOSAL SUBMISSION REQUIREMENTS AND RESPONSE FORMAT

Consultant is responsible for preparing a well-organized and concise written Proposal. Emphasis should be on completeness, clarity of content, and efficiency of the Proposal.

Although there is no page limit, please provide brief, concise, relevant information that best pertains to this RFP.

To be considered for selection, Consultants must submit a complete response to this RFP that includes the following mandatory information and/or requirements in the following format and order. Failure to provide any of the information requested below may be cause for the Proposal to be considered non-responsive.

1. Letter of Transmittal including acceptance of City Professional Services Agreement (See Attachment A)
2. Proposal Certification Statement (See Attachment B)
3. Key Personnel summary, Staffing Plan and Organizational Chart (place resumé's in an appendix)
4. Experience and references
5. Project Approach/Scope of Work
6. Financial Management and Accounting System in use that meets federal requirements
7. Project completion Schedule
8. Exhibit 10Q (See Attachment C) download from Caltrans site
9. Non-Collusion Affidavit (See Attachment D)
10. Fair Employment Practices Verification (See Attachment E)
11. Cost Proposal (separate sealed envelope) as total Cost-Plus Fixed Fee basis

Additional guidelines for the mandatory information and/or requirements listed above are described in the next sections.

III-3. LETTER OF TRANSMITTAL

Identify Consultant's legal name and contact information, including corporate office and local office address, telephone number, website address, and e-mail address. Summarize key elements of the Proposal. Consultant shall affirmatively state that they have reviewed and are ready to execute the City's standard form Professional Services Agreement, as amended to incorporate Federal regulations, (Attachment "A") in its Letter of Transmittal. The letter must also stipulate that the cost Proposal will remain valid for a period of at least 120 days. The letter shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Consultant.

III-4. CERTIFICATION STATEMENT

All submitted Proposals must contain a signed certification statement (see Attachment "B").

III-5. KEY PERSONNEL

Identify the name and specific qualifications, experience, availability, and appropriate licenses held of the key personnel assigned to the project in a summary paragraph for each individual. Include a one-page resume for the assigned staff member(s) in an appendix. Provide a description and availability for any additional key staff who will aid in accomplishing the scope of work. Include any subconsultants which Consultant proposes to use for any portion of the services. At least one of the key personnel shall be a Professional Civil Engineer and/or Professional Traffic Engineer licensed to practice in the State of California and, as well, at least one key staff member shall be an Envision Sustainability Professional (as certified by the Institute for Sustainable Infrastructure). Provide an Organizational Chart / Staffing Commitment.

Consultant shall also identify a Management Contact (a representative authorized to sign an agreement for your firm and act as the primary point of contact). The successful Consultant may only change the Management Contact, staff, and specialists with prior written permission of the City. Provide documentation of the Management Contact's contracting authority.

III-6. EXPERIENCE AND REFERENCES

Provide a list of representative projects undertaken by Consultant in the last five (5) years demonstrating experience in providing similar services. Identify the organizations for which the work was performed and provide the current names, telephone numbers, and email addresses of persons who can be contacted. The representative projects shall include the development of PAED reports, public outreach programs, and preliminary engineering design work. For each project, the Consultant shall provide a project summary and project budget.

III-7. PROJECT APPROACH/SCOPE OF WORK

Provide a detailed work plan, including a detailed task description proposed for each element of the Scope of Work described in this RFP as well as any additional/optional work recommended by the Consultant. The Proposal will discuss the Consultant's understanding of the project and how the Consultant will conduct each task, in sufficient detail to demonstrate Consultant's clear understanding of the Project Goals and Scope of Work. Including potential challenges and possible solutions. Additional information or

work efforts not otherwise identified herein which, in your opinion, should be included must be clearly identified.

The Consultant's Proposal shall recommend a Public Outreach Plan with strategies that will provide the most stakeholder participation and input. The Consultant shall provide specific tools and communication mediums that will be used to engage stakeholders and collect input.

III-8. FINANCIAL MANAGEMENT AND ACCOUNTING SYSTEM

An Agreement shall not be awarded to a consultant without the determination that there is an adequate financial management and accounting system in place, as required by 48 CFR 16.301-3, 2 CFR 200 et seq, and 48 CFR 31 et seq. Provide an explanation and documentation that the Financial Management and Accounting System meets the requirements.

III-9. PROJECT SCHEDULE

In addition to the workplan, provide a schedule depicting the sequence and duration of tasks that details how the proposed scope of work will be organized and executed in a timely manner. Provide the schedule in a Microsoft Project or equivalent format.

III-10. CALTRANS EXHIBIT 10Q

All submitted Proposals must contain a fully completed and signed Exhibit 10Q (Attachment "C") Disclosure of Lobbying Activities. Download the Exhibit from the Caltrans site.

III-11. NON-COLLUSION AFFIDAVIT

All submitted Proposals must contain a fully completed and signed Non-Collusion Affidavit (Attachment "D") attached hereto.

III-12. FAIR EMPLOYMENT PRACTICES VERIFICATION

All submitted Proposals must contain a fully completed and signed Fair Employment Practices Verification (Attachment "E") attached hereto.

III-13. COST PROPOSAL

In a separate sealed envelope, Consultant shall provide their cost Proposal to include the total compensation on a Cost-Plus Fixed Fee basis inclusive of a detailed estimate for the mandatory Scope of Work. Provide a detailed matrix of Tasks, Subtasks, Personnel assigned, Subconsultants, hourly rates, scheduled hours, total costs and indirect cost rate. The Cost Proposal shall fully describe each Task matching the proposed Scope of Work. The Cost Proposal shall include all labor, materials, reprographics and meetings. There shall be no line items for reimbursables.

Additional services as proposed by the Consultant shall be itemized in the same manner as described above but shall be clearly stated as Optional Services not included in the Cost-Plus Fixed Fee detailed estimate for the mandatory Scope of Work.

The Maximum Funds available for this Project phase is \$854,000.

SECTION IV – EVALUATION / SELECTION OF PROPOSALS

IV-1. CLARIFICATIONS

The City reserves the right to seek written clarification of each Proposal submitted. The City also reserves the right to require other evidence of minimum qualifications, technical, managerial, financial, or other abilities prior to selection.

IV-2. PROPOSAL EVALUATION AND SELECTION

The City will select a Consultant based on the evaluation of the submitted Proposals, determining the best qualified firm. The City reserves the right to request a Best and Final Offer (BAFO) from the top ranked Consultant. The City will recommend the award of the contract to the highest ranked and responsive Consultant.

IV-3. SINGLE OR MULTIPLE CONTRACTS

The City will award the contract to only one Consultant to provide all services described in the Scope of Work in this RFP.

SECTION V – GENERAL RFP INFORMATION

V-1. PUBLIC RECORDS

Responses to this RFP become the exclusive property of the City and are subject to the California Public Records Act. Those elements in each Proposal which are trade secrets as that term is defined in California Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET", "CONFIDENTIAL", or "PROPRIETARY" may not be subject to disclosure. The City shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. Consultants who indiscriminately identify all or most of their Proposal as exempt from disclosure without justification may be deemed non-responsive.

In the event the City is required to defend an action on a Public Records Act request for any of the contents of a Proposal marked "confidential", "proprietary", or "trade secret", the Consultant agrees, upon submission of its Proposal for City's consideration, to defend and indemnify the City from all costs and expenses, including attorney's fees, if any action or liability arising under the Public Records Act.

V-2. CANCELLATION

The City reserves the right to cancel this RFP or the contract award, at any time before execution of the contract by both parties, if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

V-3. LATE PROPOSALS

All Proposals not received by the RFP due date will not be considered or returned to the Consultant.

V-4. DISPUTES

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.

V-5. PROPOSER CERTIFICATIONS

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. The Consultant has carefully examined all RFP documents, including the Agreement (attached as Attachment "A"), and all addenda, and fully understands

the intention of the RFP is to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. The Consultant certifies that Consultant is ready, willing, and able to comply with all terms of the attached Agreement.

2. The Consultant is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. The Consultant accepts all of the terms of the City's Agreement and warrants that Consultant will fully meet all of the insurance requirements contained therein. If the Consultant wishes to amend or modify any terms of the Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the Agreement not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, the Consultant may withdraw the proposed change, or the entire Proposal and the City may elect to award the contract to the next highest ranked Consultant.
5. The Consultant certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Consultant's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the Proposal or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Consultant's response to this RFP.
6. The Consultant has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Consultant shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Consultant.
7. The Consultant, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed Agreement.
8. The Consultant has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

9. The Consultant shall also certify Consultant's state of residence.

V-6. NONDISCRIMINATION

By the act of submitting a Proposal in response to this RFP, the Consultant certifies, under penalty of perjury, that the Consultant has not discriminated against minorities, women, or emerging small business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any required subcontracts.

V-7. PROPOSED LIABILITY

Consultants responding to this RFP do so solely at their expense, and the City is not responsible for any Consultant expenses associated with the RFP. By proposing, Consultants agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Consultant in protesting any portion of the RFP documents or the City's selection decision.

V-8. CITY REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, AND REVISIONS

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Consultant to timely respond to such a request for additional information or clarification may result in a finding that the Consultant is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Consultant of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Consultant. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

V-9. REJECTION OF PROPOSALS

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Consultant to adhere to one or more of the provisions established in the RFP.
2. Failure of the Consultant to submit a Proposal in the format specified herein.
3. Failure of the Consultant to submit a Proposal within the time requirements established herein.
4. Failure of the Consultant to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so. Rejected Proposals are considered to be non-responsive.

V-10. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY CONSULTANT

A Proposal may not be modified, withdrawn, or canceled by the Consultant following the time and date the Proposals are due (RFP due date). Proposals submitted early may be modified or withdrawn only by notice to the City at the Proposal submittal location prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, by email, sent by a duly authorized representative of the Consultant submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal. Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

V-11. DURATION OF PROPOSAL

Proposal prices, terms, and conditions shall be firm for at least one-hundred twenty (120) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during both the one-hundred-twenty (120) day period and the entirety of the term of the Agreement. The Term of the Agreement is anticipated to be one year, but this is subject to a different term based upon the evaluation of Proposals.

V-12. LOCAL, STATE, AND FEDERAL REQUIREMENTS

The City intends to select a Consultant in accordance with California law, Federal funding requirements and the City's municipal code. Selection of a Consultant under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the project a guarantee of award of a contract for any subsequent work. All work is subject to the budgetary and funding constraints of the City.

The selected Consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under the Agreement, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations including all provisions described in Chapter 10 of the Caltrans Local Assistance Procedure Manual.

V-13. ATTACHMENTS TO RFP

Below lists the Attachments to this RFP which are incorporated herein by reference. Note that Attachment A, the Sample Professional Services Agreement, is provided for your review; Attachment B, Proposal Certification Statement, is to be completed and returned with the Proposal; Attachment C, Caltrans Form Exhibit 10Q, is to be downloaded, completed and returned with the Proposal; Attachment D, Non-Collusion Affidavit, is to be completed and returned with the Proposal; and Exhibit E, Fair Employment Practices Verification, is to be completed and returned with the Proposal.

ATTACHMENT A – AGREEMENT FOR PROFESSIONAL SERVICES

See separate document attachment.

ATTACHMENT B – PROPOSAL CERTIFICATION STATEMENT

See separate document attachment.

SUBMIT WITH PROPOSAL

ATTACHMENT C – EXHIBIT 10Q, DISCLOSURE OF LOBBYING ACTIVITY

Consultant shall download, complete and submit with their Proposal the Caltrans Exhibit 10Q – Disclosure of Lobbying Activity. This is a “fill in” form available at: [EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES \(ca.gov\)](#)

SUBMIT WITH PROPOSAL

ATTACHMENT D – NON-COLLUSION AFFIDAVIT

See separate document attachment. Consultant shall complete Attachment D.

SUBMIT WITH PROPOSAL

**ATTACHMENT E – FAIR EMPLOYMENT PRACTICES
VERIFICATION**

See separate document attachment. Consultant shall complete Attachment E.

SUBMIT WITH PROPOSAL

ATTACHMENT C

Proposals Evaluation Summary

ATTACHMENT C



PROPOSALS EVALUATION SUMMARY SHEET

RFP Title: LA PAZ ROAD MOBILITY ENHANCEMENTS AND PERMANENT REPAIR - PAED
RFP Issue Date: August 5, 2024
RFP Due Date: September 12, 2024
Number of Proposals: 2

Evaluation Summary		
Consultant Name	Evaluation Average	Evaluation Ranking
MARK THOMAS	89	1
GHD	85	2

ATTACHMENT D

Professional Services Agreement with
Mark Thomas & Company, Inc.

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN CITY OF LAGUNA NIGUEL AND
MARK THOMAS & COMPANY, INC.
FOR THE
LA PAZ ROAD MOBILITY ENHANCEMENTS AND PERMANENT REPAIR
PROJECT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into _____, by and between CITY OF LAGUNA NIGUEL, a California municipal corporation (“**City**”) and Mark Thomas & Company, Inc., a California General Stock Corporation (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties**.” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents : a) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; Consultant makes no warranties, guarantees, express or implied under this Agreement or otherwise in connection with consultant’s services. ;and, c) Consultant shall follow the professional standards and practices in performing the services required hereunder consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California;. This Project is wholly or partially funded by federal funds administered by the California Department of Transportation (“Caltrans”) on behalf of the Federal Highway Administration (“FHWA”).

1.2 Consultant’s Proposal and City’s RFP. Consultant’s proposal for this Agreement (“**Consultant’s Proposal**”), dated September 12, 2024, as amended November 5, 2024, shall be incorporated herein by this reference as though fully set forth herein. City circulated a Request for Proposals for the services provided for herein on August 5, 2024. City’s Request for Proposals (“**City’s RFP**”), which was responded to by Consultant’s Proposal, shall be incorporated herein by this reference as though fully set forth herein. The Scope of Services shall include the scope of services or work included both in Consultant’s Proposal as well as in City’s RFP. In the event of any inconsistency or any conflict between the terms of Consultant’s Proposal (for scope of services or work, or schedule of performance), and the terms of City’s RFP (for scope of services or work, or schedule of performance), the Consultant’s Proposal shall govern, unless this Agreement provides otherwise. In the event of any inconsistency or any conflict between the terms of Consultant’s Proposal, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant’s Proposal, other than description of scope of services or

work, as well as description of schedule of performance, shall apply to this Agreement, unless specifically agreed to by City in writing.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns shall not be liable at law or in equity for failure of Consultant to comply with this Section.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain and maintain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Additional Services and Compensation. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as the Laguna Niguel Municipal Code, is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

1.6 Familiarity with Work. By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

1.7 Software and Computer Services. If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it is familiar with and/or has inspected City's current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Consultant acknowledges that City is relying on this representation by Consultant as a material consideration in entering into this Agreement.

1.8 Prevailing Wages. If services include any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of

Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws. To the maximum extent permitted by law, Consultant's obligations in Section 5.3 (Indemnification) expressly apply to acts or omissions arising out of, or incidental to, the payment of prevailing wages by any person or entity (including Consultant, its subcontractors, and each of their officers, employees and agents) in connection with any services, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Consultant pursuant to this section shall survive termination of the Agreement.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. ALLOWABLE COSTS AND PAYMENTS

2.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's Cost Proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by City shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in subsection 2.9 of this Section shall not be exceeded, unless authorized by Agreement amendment.

2.2 The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. Consultant's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

2.3 In addition to the allowable incurred costs, City will pay Consultant a fixed fee of **Seventy Three Thousand Four Hundred Sixty Four Dollars (\$73,464)**. The fixed fee is

nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by Agreement amendment.

2.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

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

2.6 Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in Exhibit "A", City shall have the right to delay payment or terminate this Agreement.

2.7 No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

2.8 Consultant will be reimbursed promptly according to California Regulations upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Section 15 Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of Consultant's work. Invoices shall be emailed to City's Contract Administrator at the following email address: Cityoflagunaniguel+source-PWHM@mystamp.li.com

2.9 The total amount payable by City including the fixed fee shall not exceed Nine Hundred Fifty Six Thousand Four Hundred One Dollars and No Cents (\$956,401.00).

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

ARTICLE 3. PERFORMANCE SCHEDULE

3.0 **Time of Essence.** Time is of the essence in the performance of this Agreement.

3.1 **Term.** Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than December 31, 2025. The term of this Agreement may be extended administratively (with total cumulative extension no greater than two years), by the City pursuant to Section 9.4 and without the need for further approval by the City Council, if the Consultant's performance is satisfactory and it is in the best interest of the City.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, (with the express exception of delays arising from the impact of COVID-19 and its variants to the extent such impact is foreseeable or should have reasonably been foreseeable), if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of this Agreement pursuant to this Section.

ARTICLE 4. COORDINATION OF WORK

4.1 Consultant Representative. The **Consultant Representative** is Patrick Somerville, Division Manager + Associate Principal, (714) 815-5222, psomerville@markthomas.com, who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

4.2 City Representative. The **City Representative** is such person as designated by the City Manager or her designee. The City Representative shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Consultant's responsibility to assure that the City Representative is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.

4.3 Approvals from City. City approvals or actions, pursuant to the authority of this Agreement, may be made (unless otherwise specified) either by the City Manager, the Public Works Director, or by the City Representative (or by their respective delegates as provided for in writing).

4.4 Independent Contractor. Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set

forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

4.5 Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Consultant shall not contract with any other entity to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Consultant, or any surety or insured of Consultant, of any liability hereunder without express written consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO")

form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automobile Liability.** A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$2,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and, network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Excess Liability and Umbrella Liability Insurance.** Excess liability insurance and/or umbrella liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording

as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall, upon request of City, furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements herein.

5.2 General Insurance Requirements.

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give 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 insurance policies.

(b) **Cancellation/Amendment.** All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment of premium) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance, or reinstatement of policy, in conformance with this Agreement to City.

(c) **Additional Insureds.** The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees, agents and designated volunteers ("**City Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring 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, and policies of insurance shall not contain any cross-liability exclusions.

(d) **Primary, Subrogation, Contribution and Coverage.** All of the above policies of insurance shall be primary insurance. The insurers (with exception of professional liability insurer) for above policies, Consultant and any subcontractors are all deemed hereof to

waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein 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.

(e) **Limitations, Self-Insured Retention and Deductibles.** Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention (without impairment of obligation of primary insured under this Agreement to satisfy any self-insured retention). Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney's fees, defense expenses and claims.

5.3 Indemnification.

(a) **General Obligations.** Consultant agrees, to the full extent permitted by law, to immediately indemnify, defend and hold harmless City and its elected and appointed officers, employees, attorneys, successors and assigns (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages or injuries to persons or property, demands, expenses, losses, costs, penalties, obligations, errors, omissions or liabilities of any kind that may be asserted or claimed by any person, firm or entity arising out of, pertaining to, incident to or in connection with any alleged acts, errors or omissions of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**") in connection with the performance of Consultant's Services, or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform the work, operations or activities provided herein, or any term, provision, covenant or condition of this Agreement, with such negligence or failure to perform to be determined by the City (herein "**Claims or Liabilities**"), and in connection therewith: 1) Consultant will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitees will reimburse and pay for all costs and

expenses, including legal costs and attorneys' fees, incurred by Indemnitees in connection therewith; and, 2) Consultant will promptly pay and satisfy any judgment, award or decree rendered against Indemnitees, and reimburse Indemnitees for the cost of any settlement paid by Indemnitees, for any such Claims or Liabilities, and will save and hold Indemnitees harmless therefrom.

(b) **Further Provisions.** The indemnity obligation herein shall be binding on successors, assigns and heirs of Consultant and shall survive termination of this Agreement. Consultant shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Consultant fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 5.3(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City's sole negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence or willful misconduct of City, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under Section 5.3 of this Agreement. Such offset, if any, does not satisfy any amount, greater than the offset, due to City from Consultant.

(c) **Professional Liability.** "If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

6.1 Records. For the purpose of determining compliance with Gov. Code § 8546.7, Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in

accordance with generally accepted accounting principles (and, as applicable, maintained also in accordance with requirements of Labor Code section 1776), shall be complete and detailed, and shall be readily accessible. 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 full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained either for a period of no less than three (3) years following completion of the services hereunder, or for such period of time as required by applicable law, whichever period of time is longer. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports. Consultant shall periodically submit written reports to City Representative concerning performance of services, upon request, and/or as necessary for City to be informed of both performance of services as well as any decisions which must be made by City.

6.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared (regardless of whether complete or incomplete) by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials under express condition that Consultant agrees such documents and materials are the sole property of City. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for City.

6.4 Confidentiality and Release of Information. All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain prior to such gain or production. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. No news releases, including photographs, public announcements, or confirmations of the same, of any part of the work, shall be made without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and

indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Southern Division, in the County of Orange, State of California.

7.2 Suspension, or Termination, Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days' notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

7.3 Default of Consultant and Opportunity to Cure. In the event that Consultant is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well

as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.4 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City therefor.

7.5 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.6 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

7.7 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.8 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive

relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

7.9 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to Public Works Director at City of Laguna Niguel, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

9.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing, approved by City and Consultant, and consistent with the Laguna Niguel Municipal Code.

9.5 Severability. Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 No Undue Influence. Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

9.7 Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this

Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

9.8 Funding Agreement. This Agreement is funded by **Program Supplement 00000A508 to Administering Agency-State Agreement for State Funded Projects No. 12-5458S21** effective March 22, 2024, between the City and the State of California Department of Transportation (“Grant Agreement”). A copy of the Grant Agreement is on file at the offices of the City. The applicable terms of the Grant Agreement are incorporated herein by reference, including Exhibit E, whether or not otherwise expressly stated herein, and Consultant shall comply with all such applicable terms.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF LAGUNA NIGUEL, a California
municipal corporation

Tamara S. Letourneau, City Manager

ATTEST:

Marissa J. Asistin, City Clerk

APPROVED AS TO FORM BY THE
CITY ATTORNEY FOR THE
CITY OF LAGUNA NIGUEL,
CALIFORNIA:

Scott C. Smith, City Attorney

CONSULTANT:

MARK THOMAS & Company, Inc., a California
General Stock Corporation

By: _____
Name: Patrick Somerville
Title: Division Manager + Associate Principal
Address: 2121 Alton Parkway, Suite 210,
Irvine, CA 92606

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

EXHIBIT A
SCOPE OF SERVICES

- I. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.**
- II. Consultant will perform services, described in Consultant's Proposal and City's RFP (refer to Section 1.2 for conflicts), and as specified in more detail below.**
- III. Consultant will perform the following services as described on the attached Mark Thomas, Inc., Scope of Work , consisting of 21 pages.**

EXHIBIT B
SPECIAL REQUIREMENTS

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF COMPENSATION

- I. City will compensate Consultant for the services performed upon submission of a valid invoice, as described in Section 2.2.**
- II. The total compensation for the services shall not exceed the total of the Contract Sum, as provided in Section 2.1 of this Agreement.**
- III. Consultant will be compensated for services provided pursuant to this Agreement in accordance with description in Consultant's Proposal.**

EXHIBIT D

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services and deliver all work products timely in accordance with the schedule described in Consultant's Proposal and City's RFP (refer to Section 1.2 for conflicts).**

EXHIBIT E

FUNDING REQUIREMENTS

I. 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. 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.

II. 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 the City's Chief Financial Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by the City's Chief Financial Officer of unresolved audit issues. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the 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 Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this

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

1. During IOAI's review of the ICR audit work papers created by the Consultant's independent CPA, IOAI will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, 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 IOAI.
2. 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.
3. If IOAI is unable to issue a cognizant letter per subsection (e)(i) above, IOAI may require Consultant to submit a revised independent CPA-audited

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

4. If the Consultant fails to comply with the provisions of this subsection (e), or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in subsection (e)(i) above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.
5. Consultant may submit to City final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of City; and, (3) IOAI has issued its final ICR review letter. The 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.

III. Prompt Progress Payment

- A. Consultant or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or subconsultant to a subconsultant, Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.
- B. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

IV. Prompt Payment of Withheld Funds to Subconsultants

- A. The City may hold retainage from Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to Consultant based on these acceptances.

- B. No retainage will be held by the City from progress payments due to Consultant. Any retainage kept by Consultant or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.
- C. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subcontract performance, or noncompliance by a subconsultant.

V. Equipment Purchase and Other Capital Expenditures

- A. Prior authorization in writing, by the City's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000, with prior authorization by the City's Contract Administrator, three competitive quotations must be submitted with the request for such purchase, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this Agreement is subject to the following:
 - 1. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment,

fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

VI. Rebates, Kickbacks or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate this 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.

VII. Prohibition of Expending Local Agency, State, or Federal Funds for Lobbying

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

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

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

C. The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements,

which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

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

IX. 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.

D. Contract Assurance

1. Under 49 CFR 26.13(b):

- (a) Consultant, City, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.
- (b) Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - (i) Withholding monthly progress payments;
 - (ii) Assessing sanctions;
 - (iii) Liquidated damages; and/or
 - (iv) Disqualifying the contractor from future bidding as non-responsible.

X. Inspection of Work. Consultant and any subconsultant 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.

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

XII. Title VI Assurances.

Appendix A

A. During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest agrees as follows:

- 1. Compliance with Regulations: Consultant shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part

21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

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

of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

Appendix E

B. During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid

recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

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