

**PROFESSIONAL SERVICES AGREEMENT
CONSTRUCTION MANAGEMENT/RESIDENT ENGINEER
for the
FARMERSVILLE INTERCHANGE PROJECT**

This Agreement and Contract, entered into this 15 day of July, 2015, by and between the City of Farmersville, hereinafter referred to as the "CITY", and Mendoza and Associates hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as "Scope of Work" in Exhibit "A", and hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONSULTANT represents it is licensed, qualified and willing to provide such services pursuant to terms and conditions of this Agreement.

NOW, THEREFORE, CITY and CONSULTANT agree as follows:

I. SERVICES TO BE PERFORMED BY THE CONSULTANT

- A. Authorized Scope of Work: The CONSULTANT agrees to perform all work necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" - Scope of Work, for the cost identified in Exhibit "B" - Project Fee. Except to the extent specifically indicated in this Agreement or otherwise required by this Agreement, the requirements of the Request For Proposal are incorporated herein.
- B. Additional Services: Incidental work related to the PROJECT and not provided for in Exhibit "A" may be needed during the performance of this Agreement. The CONSULTANT agrees to provide any and all additional services at the rates identified in attached Exhibit "C" - Schedule of Fees for Professional Services. Such additional services shall not be performed by CONSULTANT without the written consent of CITY.
- C. Conditions of Funding Sources: To the extent that this Agreement or any services hereunder on the applicable CITY project are funded by fiscal

assistance from another governmental entity, CONSULTANT and any of its sub-consultants shall and must comply with all applicable conditions, requirements, rules and regulations to which CITY is bound by the terms of such fiscal assistance program. Notwithstanding any other provision within this Agreement, in the event of any conflict between any binding written requirement of any such funding source(s) and this Agreement, the former shall be controlling only to the extent of such conflict and the latter shall otherwise remain effective in all other contexts.

II. TIME OF PERFORMANCE

The CONSULTANT shall commence performance of this Agreement within ten (10) days following City's issuance of Notice to Proceed and shall complete the work within the timeframes outlined in Exhibit "A", unless otherwise extended in writing by CITY, in its sole discretion.

If the CONSULTANT fails to complete the PROJECT within the time specified, plus any extensions of time which may be granted, the CITY shall determine the percent of each work item completed and shall pay the CONSULTANT on that basis.

CONSULTANT shall not be responsible for delays which are due to causes beyond the CONSULTANT's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in writing signed by both parties.

III. COMPENSATION

- A. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, as payment in full, a sum not to exceed eight hundred and twenty-two thousand eight hundred and sixty six dollars (\$822,266.00). This amount shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibits "A" and "B".
- B. Payment of Compensation: The CONSULTANT shall be earned and compensated according to the progress payment schedule set forth in Exhibit "D" upon completion of percentage of each noted phase. The CONSULTANT shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV. AUTHORIZED REPRESENTATIVE

- A. CITY: The City Manager or his designee _____ shall represent the CITY in all matters pertaining to the services to be rendered under

this Agreement, except where approval of the City Council of the City of Farmersville is specifically required.

- B. CONSULTANT: Jeff Pallesen shall represent and act as principle for CONSULTANT in all matters pertaining to the services to be rendered by it under this Agreement.

V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. Termination By Without Cause: The CITY may terminate this Agreement at any time by giving written notice such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The CITY may by written notice to the CONSULTANT specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
1. If the CONSULTANT fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
 2. If the CONSULTANT fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.
- C. Post-Termination:
1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
 2. Except with respect to defaults of sub-consultants for which CONSULTANT shall be responsible, the CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused

by the default of a sub-consultant, the CONSULTANT shall be liable for failure to perform.

3. Should the Agreement be terminated with or without cause, the CONSULTANT shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the CONSULTANT pursuant to this Agreement.
 4. Upon termination, with or without cause, CONSULTANT will be compensated for the services satisfactorily completed to the date of termination according to compensation provisions contained herein. In no event, shall the total compensation paid to CONSULTANT exceed the total compensation agreed to herein.
 5. If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the CONSULTANT was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was properly terminated without cause.
 6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.
- D. Temporary Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of CITY for which CONSULTANT's services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety, financial, legal liability exposure or other exigency, or a failure or refusal by CONSULTANT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

VI. INTEREST OF OFFICIALS AND THE CONSULTANT

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
1. Participate in any decision relating to this Agreement which effects his/her personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his/her tenure or for one year thereafter.

- B. The CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that he/she shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

VII. NO PERSONNEL AGENCY, COMMISSION, OR CONTINGENT FEE

The CONSULTANT warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

I. SUBCONSULTANT

- A. The CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the CITY.
- B. In no event shall the CONSULTANT subcontract work in excess of fifty percent (50%) of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project.
- C. Nothing contained in this Contract or otherwise, shall create any contractual relation between the CITY and any sub-consultants, and no subcontract shall relieve the CONSULTANT of his/her responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its sub-consultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT'S obligation to pay its sub-consultants is an independent obligation from the CITY'S obligation to make payments to the CONSULTANT.
- D. Any subcontract entered into as a result of this Contract, must incorporate all the provisions of this Contract and expressly indicate that all such provisions shall be applicable to sub-consultants.
- E. CONSULTANT shall pay its sub-consultants within ten (10) calendar days from receipt of each payment made to the CONSULTANT by the CITY.

- F. Any substitution of sub-consultants must be approved in writing by the CITY's Contract Administrator in advance of assigning work to a substitute sub-consultant.

II. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

- A. This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has a DBE goal, the Consultant must meet the goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE sub-consultant is unable to perform, the CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin, sex or any other legally protected classification in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the local agency deems appropriate.
- D. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- E. A DBE may be terminated only with prior written approval from the CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting local agency consent for the termination, the prime CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

III. PERFORMANCE OF DBE CONSULTANT AND OTHER DBE SUBCONSULTANT/SUPPLIERS

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing; and other relevant factors.

- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

IV. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONSULTANTS

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

V. DBE RECORDS

- A. The CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANTS shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Sub-consultants,"

CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the CONSULTANT or the CONSULTANT'S authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Sub-consultants" is submitted to the Contract Administrator.

VI. DBE CERTIFICATION AND DECERTIFICATION STATUS

If a DBE sub-consultant is decertified during the life of the Contract, the decertified sub-consultant shall notify the CONSULTANT in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the Contract, the sub-consultant shall notify the CONSULTANT in writing with the date of certification. Any changes should be reported to the CITY'S Contract Administrator within thirty (30) calendar days.

VII. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the CONSULTANT shall be, and is, an independent contractor and is not an agent or employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters. Notwithstanding any other CITY, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subconsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.

VIII. SPECIFICATIONS

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

IX. DOCUMENTS/DATA

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONSULTANT will be at CITY's sole risk and without liability to CONSULTANT unless the CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

- B. Publication: No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.
- G. Copyrights: The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY (and any funding agency) be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.
- H. Patent Rights: Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall apply to this agreement.

X. INDEMNIFICATION AND INSURANCE

- A. As respects acts, errors, or omissions in the performance of professional services, CONSULTANT agrees to indemnify and hold harmless and defend CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, , or liability arising directly out of CONSULTANT's negligent or tortious acts, errors or omissions in the performance of his/her professional services under the terms of this

Agreement. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

- B. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, , or liability, arising out of or in connection with CONSULTANT's (or CONSULTANT's sub-contractors, if any) performance or failure to perform, under the terms of this Agreement; excepting those which arise out of the sole negligence of CITY. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.
- C. Without limiting CITY's right to indemnification, it is agreed that CONSULTANT shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' compensation insurance as required by California statutes.
 2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable).
 3. Professional liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000). CONSULTANT shall maintain such coverage for at least four (4) years from the termination of this Agreement. During this four (4) year period, CONSULTANT shall use CONSULTANT'S best efforts to ensure that there is no change of the retroactive date on this insurance coverage.
 4. Comprehensive Automobile Liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.

- D. CITY'S Risk Manager is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the CITY'S best interest.
- E. Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Farmersville, 909 W. Visalia Rd., Farmersville, CA 93223."

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Farmersville shall apply in excess of and not contribute with insurance provided by this policy."

"The City of Farmersville, its officers, agents, employees, representatives and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Farmersville."

- F. Prior to commencing any work under this Agreement, CONSULTANT shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be CONSULTANT's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- G. In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums otherwise due to CONSULTANT under the Agreement; or
2. Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof; or
3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT's failure to maintain insurance or secure appropriate endorsements.

XI. NON-DISCRIMINATION CLAUSE

During the performance of this Contract, CONSULTANT and its sub-consultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and sub-consultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

XII. MISCELLANEOUS PROVISIONS

- A. Asbestos and Hazardous Materials: In providing its services hereunder, CONSULTANT shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the PROJECT. In the event the CONSULTANT or CITY become aware of the presence of asbestos or hazardous material at the jobsite, such party must immediately notify the other party and CONSULTANT shall assist CITY in complying with all applicable

federal and state rules and regulations pertaining to notification of the prime and subcontractors performing work.

- B. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- C. Prohibition of Assignment: Neither the CITY nor CONSULTANT shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- D. Dispute/Governing Law: Any dispute not resolvable by informally between the parties to this Agreement shall only be adjudicated in a court of law under the laws of the State of California.
- E. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the CONSULTANT, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

CITY OF FARMERSVILLE
909 W. Visalia Rd.
Farmersville, CA 93223
Attention: City Clerk

MENDOZA and ASSOCIATES
8795 Folsom Blvd., Suite 102
Sacramento, CA 95826
Attention: Jeff Pallesen

- F. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The CONSULTANT hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- G. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.
- H. Conflict With Law: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.

- I. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- J. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- K. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- L. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- M. Dispute Resolution: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute after compliance with statutory claim presentation requirements, if any.
- N. No Third-Party Beneficiaries Intended: Unless specifically set forth, the parties to this Agreement do not intend to provide any other person or entity other than a signatory hereto with any benefit or enforceable legal or equitable right or remedy.

XIII. ADDITIONAL MISCELLANEOUS PROVISIONS

- A. Record Retention: The City, State, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or their duly authorized representatives shall have access to any documents, books, papers, and records of the Consultant (which are directly pertinent to the project) for the purpose of making an audit, examination, excerpts, and transcripts. The Consultant shall maintain all required records for at least three (3) years after final payment on the project and all pending matters are closed. This also applies to all subcontracts in excess of \$25,000.

- B. Cost Principals: Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Administrative requirements are set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This also applies to all subcontracts in excess of \$25,000.
- C. Changes in Work: If changes in scope, character, or complexity become desirable or necessary as work progresses, adjustments to the agreement may be made in writing signed by the CITY and CONSULTANT subject to funding approval by the State. In special cases, where it is essential that extra work be performed immediately, execution of the supplemental agreement covering the changes will be accomplished as soon as possible. This agreement shall provide for the preparation and submittal of contract change orders when applicable. There shall be no charge to the City when the change order is required to correct errors or omissions by the Service Provider
- D. General Compliance with Laws and Wage Rates: The Consultant shall be required to comply with all federal, state, and local laws and ordinances applicable to the work.
- E. Compliance with the Copland "Anti-Kickback" Act (18 USC 874): The Consultant is prohibited from inducing, by any means, any person involved in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. (All suspected or reported violations shall be reported to Caltrans)
- F. Consultant's Endorsement: The responsible Consultant/Engineer shall sign plans, specifications, and estimates and engineering data furnished by him/her and where appropriate, indicate his/her California registration number.
- G. Clean Air and Water: Applicable to Contracts in Excess of \$100,000.
- a. Definition. "Facility" means an building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the CONSULTANT or and sub-consultant, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

b. In compliance with regulations issued by the EPA, 2 C.F.R, part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. §. 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the CONSULTANT agrees to:

1. Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;
2. Promptly notify the Owner if a facility the CONSULTANT intends to use in the performance of this contract is on the EPA List of Violating Facilities or the CONSULTANT knows that it has been recommended to be placed on the list;
3. Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution control Act, and all applicable clean air and clean water standards;
4. Include or cause to be included the provisions of this clause in every subcontract and take such action as Caltrans may direct as a means of enforcing such provisions.

H. Equal Employment Opportunity:

The CONSULTANT shall be required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60)

- a. The CONSULTANT hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from Caltrans, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national

origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and pursuant to rules, regulations, and orders of the Secretary of Labor and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph 17(a) (1) and the provisions of paragraphs

17(a)(1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as Caltrans or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with or by a subcontractor or vendor as a result of such direction by Caltrans or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.
9. The Contractor agrees that it will assist and cooperate actively with Caltrans and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish Caltrans and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist Caltrans in the discharge of the Caltrans primary responsibility for securing compliance.
10. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by Caltrans or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, Caltrans may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Caltrans financial assistance; refrain from extending any further assistance to the applicant under the program

with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

b. Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

1. Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.
2. Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.
3. Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

I. Monthly Reporting: The CONSULTANT shall submit a report on a monthly basis to the City covering the general progress of the job and describing any problems or factors being experienced.

J. Federal Non-Discrimination Statutes:

The CONSULTANT must comply with all Federal statutes relating to non-discrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L.88-352) which prohibits discrimination on the basis of race, color, or national origin;
2. Section 112 of PL 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794) which prohibits discrimination on the basis of handicaps;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C.6101-6107) which prohibits discrimination because of age;
5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;

6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L.91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
7. Sections 523 and 527 of the Public Health Service Act of 1912 (42U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and
10. The requirements of any other non-discrimination statute(s) which may apply.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CITY OF FARMERSVILLE

CONSULTANT

Gregorio Gomez, Mayor

Approved as to Form

City Attorney or Deputy

Attachments:

EXHIBIT "A": Scope of Work
EXHIBIT "B": Project Fees
EXHIBIT "C": Schedule of Fees for Professional Services
EXHIBIT "D": Progress Payment Schedule
EXHIBIT "E": Exhibit 10-O2 Consultant Contract DBE Information