

**CITY OF PALO ALTO CONTRACT NO. C21179265E
 AGREEMENT FOR PROFESSIONAL SERVICES
 BETWEEN THE CITY OF PALO ALTO AND TANNER PACIFIC, INC.**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 21st day of June 2021 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and TANNER PACIFIC, INC., a corporation, located at 751 Laurel Street, Suite 609, San Carlos, CA 94070 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

RECITALS

A. CITY intends to support Capital Improvement Program (CIP) Projects at the Palo Alto Regional Water Quality Control Plant (the “Project”) and desires to engage a consultant to provide construction management and inspection services on an on-call, as-needed, time-limited basis in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement on an on-call, as-needed basis. The performance of all Services shall be to the reasonable satisfaction of CITY.

☒ Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

CITY may elect to, but is not required to, authorize on-call Services up to the maximum compensation amount set forth in Section 4 (Not to Exceed Compensation). CONSULTANT shall provide on-call Services only by advanced, written authorization from CITY as detailed in this Section. On-call Services, if any, shall be authorized by

CITY, as needed, with a Task Order assigned and approved by CITY's authorized representative, following the selection process set forth in Exhibit A. Each Task Order shall be in substantially the same form as Exhibit A-1 entitled "PROFESSIONAL SERVICES TASK ORDER". Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for on-call Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY, the fully executed Task Order shall become part of this Agreement. The cumulative total compensation due to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of compensation set forth in Section 4. CONSULTANT shall only be compensated for on-call Services performed under an authorized Task Order and only up to the maximum compensation amount set forth in Section 4. Performance of and payment for any on-call Services are subject to all requirements and restrictions in this Agreement.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through December 31, 2026 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled "SCHEDULE OF PERFORMANCE". Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The CITY is engaging multiple consultants, including CONSULTANT, that are eligible to respond with proposals to the CITY's project-specific Task Orders under the process described in Exhibit A. The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure detailed in Exhibit C, entitled "COMPENSATION," including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **One Dollar (\$1)**, unless CITY selects CONSULTANT, according to the process in Exhibit A, to perform services under a Task Order not to exceed **One Million Four Hundred Fifty Thousand Dollars (\$1,450,000)** over the term of the Agreement. No pre-qualified consultant, including the CONSULTANT under this Agreement, is guaranteed selection or assured of any minimum quantity of work to be performed. In the event CONSULTANT is not selected to provide Services under a Task Order, no payment is due from CITY.

The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

☒ Optional Additional Services Provision (This provision applies only if checked and a not-to-exceed compensation amount for Additional Services is allocated below under this Section 4.)

In addition to the not-to-exceed compensation specified above, CITY has set aside the not-to-exceed compensation amount of **One Hundred Fifty Thousand Dollars (\$150,000)** for the performance of Additional Services (as defined below). The total compensation for performance of the Services, Additional Services and any reimbursable expenses specified in Exhibit C, shall not exceed **One Million Six Hundred Thousand Dollars (\$1,600,000)**, as detailed in Exhibit C.

"Additional Services" means any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in a Task Order issued under Exhibit A. CITY may elect to, but is not required to, authorize Additional Services up to the maximum amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall provide Additional Services only by advanced, written authorization from CITY as detailed in this Section. Additional Services, if any, shall be authorized by CITY with a Task Order assigned and authorized by CITY's Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1, entitled "PROFESSIONAL SERVICES TASK ORDER". Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for Additional Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders authorized under this Agreement shall not exceed the amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and only up to the maximum amount of compensation set forth for Additional Services in this Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates,

and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT's schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status

with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

SECTION 12. SUBCONTRACTING.

☐ **Option A: No Subcontractor:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

☒ **Option B: Subcontracts Authorized:** Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

Jacobs Engineering Group, Inc.
GHD, Inc.
PMA Consulting, Inc.
RGM Kramer, Inc.
Consolidated Engineering Laboratories (CEL)
Bay Area Coating Consultants, Inc. (BACC)
Red Brick Consulting, Inc.
JHS Consulting LLC

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts

and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Michael Jaeger, PE, QSD/QSP as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Padmakar Chaobal, Public Works Department, Environmental Services Division, Regional Water Quality Control Plant, 2501 Embarcadero Way, Palo Alto, CA, 94303, Telephone: 650-329-2287. CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

SECTION 15. AUDITS. CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

SECTION 16. INDEMNITY.

☒ [Option A applies to the following design professionals pursuant to Civil Code Section

2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT's proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.

☐ **[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.]** 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit

D, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A:-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such

work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of
CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

SECTION 21. CONFLICT OF INTEREST.

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any

conflict arises.

21.3. If the CONSULTANT meets the definition of a “Consultant” as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person’s race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY’s Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file

at the Purchasing Department's office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.

CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

SECTION 25. NON-APPROPRIATION. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.

☐ 26.1. **This Project is not subject to prevailing wages and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

OR

☒ 26.1. **This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code Sections 1720 et seq. and related regulations.** CONSULTANT is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the CITY has obtained the general prevailing rate of per diem wages and the general rate for holiday and

overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the CITY’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, web site (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. CONSULTANT shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including but not limited to Sections 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”. For purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.



This Project is a 9204 Public Works Project and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

OR



This Project is not a 9204 Public Works Project.

SECTION 28. CONFIDENTIAL INFORMATION.

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY’s Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT’s obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. “Confidential Information” means all data, information (including without limitation “Personal Information” about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT’s possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

SECTION 29. MISCELLANEOUS PROVISIONS.

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

SECTION 30. EXHIBITS. Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | EXHIBIT A: | SCOPE OF SERVICES |
| <input checked="" type="checkbox"/> | EXHIBIT A-1 | PROFESSIONAL SERVICES TASK ORDER |
| <input checked="" type="checkbox"/> | EXHIBIT B: | SCHEDULE OF PERFORMANCE |
| <input checked="" type="checkbox"/> | EXHIBIT C: | COMPENSATION |
| <input checked="" type="checkbox"/> | EXHIBIT C-1: | SCHEDULE OF RATES |
| <input checked="" type="checkbox"/> | EXHIBIT D: | INSURANCE REQUIREMENTS |
| <input checked="" type="checkbox"/> | EXHIBIT E: | DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS |
| <input checked="" type="checkbox"/> | EXHIBIT F: | CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204
PUBLIC WORKS PROJECTS |

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS
ARE ATTACHED.***

CONTRACT NO. C21179265E SIGNATURE PAGE

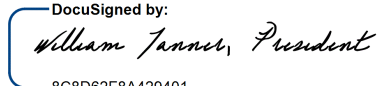
IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

CITY OF PALO ALTO

TANNER PACIFIC, INC.

City Manager

Officer 1

By: 
8C8D62F8A429401...
Name: William Tanner, President
Title: President/CEO

APPROVED AS TO FORM:

City Attorney or designee

Officer 2 (Required for Corp. or LLC)

By: 
4765458F0DAC427...
Name: Kathryn Tanner
Title: Board Secretary

EXHIBIT A SCOPE OF SERVICES

RWQCP ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

1. Task Order Proposal and Consultant Selection Process

The CITY intends to engage multiple pre-qualified construction management consultants, of which CONSULTANT is one, to respond with proposals to the CITY's Task Order description for individual projects or inspection tasks at the Regional Water Quality Control Plant (RWQCP). For each specific scope of services set forth in a Task Order description, the CITY will request proposal responses within three weeks from the pool of qualified Consultants, including CONSULTANT, to include the information specified below.

For each response to a Task Order proposal, the CONSULTANT shall submit the following within three weeks, for CITY's review and evaluation of best value for the particular project:

- Project team (CONSULTANT's staff and subconsultants)
- CONSULTANT firm's experience with the work related to the Task
- Project Team's experience with the work related to the Task
- Construction Management strategy and/or Inspection approach
- Proposed additions, subtractions, or modifications to the scope of services described by CITY for the specific Task
- Preliminary schedule
- Level of effort/Not to Exceed fee

The scope of services and price may be negotiated with one or more Consultants prior to CITY Project Manager drafting final Task Order(s) for requisite approvals under any Professional Services Agreement.

Generally, the CONSULTANT(s) will be performing construction management and inspection services on a variety of wastewater conveyance and treatment projects including rehabilitation, replacement, and decommissioning projects. A list of potential projects that could be assigned as Task Orders for construction management and/or inspection services, in no particular order, include:

- Primary Sedimentation Tanks Rehabilitation and Equipment Room Electrical Upgrade Project
- Secondary Process Upgrade Construction Project
- RWQCP Operations Center Construction Project
- Outfall Pipe Construction and Rehabilitation Project
- Headworks Construction and Demolition Project
- 72-inch Interceptor Rehabilitation Project
- 12kV Medium Voltage Electrical Network (Loop) Rehabilitation Project
- Advanced Water Purification System Project

- Recycled Water Improvements Project
- DMF Rehabilitation Project
- Other miscellaneous RWQCP CIP projects

A specific Task Order may encompass all or part of any project as determined by the CITY. For all work performed under a duly authorized Task Order, CONSULTANTS shall report directly to the CITY's designated project manager.

2. General Requirements applicable to all Task Orders.

Task Orders for construction management and inspection services may include, but are not limited to, Preconstruction Phase Tasks, Clean Water State Revolving Fund (SRF), US EPA's Water Infrastructure Finance And Innovation Act (WIFIA) Compliance Tasks, Construction Phase Tasks, and Project Closeout Phase Tasks. Additionally, some task orders may be limited to a subset of the tasks outlined in the following sections, as described in the CITY's Task Order for a specific Project.

A. General Requirements

1. For any work which requires licensing, CONSULTANT shall be appropriately licensed in accordance with the laws of the State of California. The cost for any required licenses or permits shall be the responsibility of the successful CONSULTANT.
2. CONSULTANT shall provide all necessary administration, project controls, quality assurance and professional oversight of the project to ensure that the project remains on schedule, within budget, ensures continuity of information, and satisfies the requirements of the Task Order Scope of Work. CONSULTANT shall prepare and distribute a Project Management Plan to include schedule, budget, roles, contracts and procedures.
3. For any Task Order issued to CONSULTANT, at the beginning of each month, CONSULTANT shall submit to the CITY monthly invoices for the cost incurred during previous month; including subconsultant and expenses.
 - a. If CITY chooses to seek reimbursement for some or all of CONSULTANT's costs from SRF/WIFIA, CONSULTANT shall provide State Revolving Fund (SRF) and/or EPA Water Infrastructure Finance and Innovation Act (WIFIA) funding required documentation with the invoices and clearly indicate the SRF/WIFIA eligible reimbursement amount.
4. CONSULTANT shall prepare and submit monthly invoice packages to the City, separately for each Task Order. The City prefers processing CONSULTANT pay requests that cover one calendar month. Monthly invoice packages are to include a progress report documenting progress under a specific Task Order. The report shall include the progress by each task, the budget status (authorized amount, current billing, billed to date, previously billed, amount remaining, and percent spent), outstanding issues, potential changes, project schedule and schedule impacts. CONSULTANT shall identify and mitigate potential budget overruns; and notify CITY Project Manager as soon as the potential overrun is identified. If

SRF and/or WIFIA funding is used, progress reports shall include a summary of SRF and/or WIFIA eligible costs per month.

B. Preconstruction Phase Tasks

1. CONSULTANT shall perform reviews of construction drawings and specifications at various levels of design, as assigned by the CITY with focus on constructability of the project. At a minimum, the CONSULTANT shall provide and log comments regarding the plans, specifications, and construction cost estimate in an Excel Workbook, provided by CITY. Comments should at a minimum include feedback on measurement and payment, sequencing, schedule, temporary facilities, constructability, and required contractor qualifications.

2. CONSULTANT shall assist the City with evaluation of construction bids to determine the lowest responsive and responsible bidder.

For each milestone meeting, CONSULTANT will prepare the agenda for the meeting, facilitate the meeting, address administrative and non-design issues, and prepare record of discussions of the meeting for distribution. CITY, CONSULTANT's ENGINEER and CONTRACTOR's team will attend the meeting. The ENGINEER will address design issues. At a minimum, CONSULTANT will conduct the following milestone meetings:

- a. Project kick-off Meeting
- b. Pre-bid Meeting

3. Administration

- a. CONSULTANT shall propose a project administration procedure, including an online document tracking system, for CITY approval. The administration procedure will detail how the CONSULTANT will track, store, distribute, and manage digital and hardcopy correspondence and project documentation and strategy for managing project communications.
- b. CONSULTANT shall establish and maintain a health and safety plan specific for CONSULTANT's staff and subconsultants. During construction activities, CONSULTANT shall follow CONTRACTOR(S)'s health and safety plan(s), if it is more stringent.

4. Office Setup

- a. CONSULTANT shall organize the hardcopy and digital files for the project prior to commencement of construction and coordinate with the CITY and CONTRACTOR for office trailer set-up.
- b. CITY will designate location for the office trailer and provide utility connection points, as available.
- c. CONSULTANT will provide furnished office trailer, copier, phone/service, and internet access, unless otherwise provided by City.

5. Preconstruction Activities

- a. Site Walk Observations and Documentation
 - i. CONSULTANT will conduct preconstruction inspections, documenting conditions in a log and providing digital photographs and video(s).

b. **Preconstruction Submittals**

- i. CONSULTANT will develop a list of CONTRACTOR required pre-construction submittals.
- ii. CONSULTANT will review CONTRACTOR's pre-construction submittals, schedule of values, and preliminary schedule.

c. **SRF/WIFIA Compliance Tasks**

1. CONSULTANT shall prepare and package for submittal all required State Revolving Fund (SRF) and/or US EPA's WIFIA documentation needed to obtain monthly SRF and/or WIFIA loan disbursements during the construction period. CITY will submit the documentation to the State and/or US EPA.
2. CONSULTANT shall prepare and package for submittal Quarterly/periodic Construction reports required for SRF and/or WIFIA compliance. Package shall include a narrative and photos of construction activities performed during the reporting period. CITY will submit the documentation to the State and/or WIFIA.
3. CONSULTANT shall document CONTRACTOR's compliance with all SRF and/or WIFIA requirements, including:
 - a. Project signage meeting SRF requirements
 - b. American Iron and Steel (AIS) requirements
 - c. Davis-Bacon Act compliance
 - i. CONSULTANT shall perform Davis-Bacon Wage Rate Interviews at intervals required by SRF and/or WIFIA, but not less than every time a new contractor, subcontractor, or trade begins work. Subsequent interviews shall be required periodically based upon the CITY's assessment of Risk of Noncompliance.
 - d. Disadvantaged Business Enterprise (DBE) certifications
 - e. Project Closeout forms
 - f. Certified payrolls
4. CONSULTANT shall maintain a submittal log of materials subject to AIS requirements and/or approved exemptions.
5. CONSULTANT shall prepare and package for submittal Project Close Out Report required for SRF compliance. CITY will submit the documentation to the State.

d. **Construction Phase Tasks**

1. **Construction Administration**

a. **Project Coordination**

- i. CONSULTANT shall act as the project coordinator and the point of contact for all communications with the CONTRACTOR. The CONSULTANT shall coordinate construction activities of the CITY, ENGINEER, and CONTRACTOR. CONSULTANT responsibilities include: Conduct team meetings within the consulting firm to review progress, coordinate evaluations and identify information needs; Disseminate information to the design team; Manage the project budget; Manage the project schedule; Manage sub-consultants; Manage QA / QC team.

- ii. CONSULTANT shall provide a contact phone number to respond to issues related to construction activity or coordination, 24 hours a day, 7 days a week.
 - b. Document Tracking System: CONSULTANT shall establish, implement and maintain an online system for tracking all correspondence and documents on the Project or shall adopt a project administration procedure previously approved by CITY. CONSULTANT shall incorporate within the tracking system the means to track the routing of submittals/RFIs to the CITY's other consultants.
 - c. Construction Administration Services: CONSULTANT shall provide administrative and management services. The CONSULTANT shall receive all correspondence from the CONTRACTOR and address all inquiries from the CONTRACTOR and construction related correspondence. The ENGINEER will be responsible for providing design input.
2. Meetings
- a. CONSULTANT shall prepare agendas for progress meetings and other construction meetings required during the Project, which will include weekly meetings with the CONTRACTOR and CITY.
 - b. CONSULTANT shall facilitate and prepare records of discussions for the progress meetings and other construction related meetings and distribute to all stake holders, including CITY staff, ENGINEER, and CONSULTANT staff.
 - c. CONSULTANT shall have all pending decisions detailed for the meetings as well as project statistics (schedule updates, approximate percent project complete, near-term milestones).
 - d. Anticipated Meetings
 - i. Construction kick-off meeting
 - ii. Weekly update meeting
 - iii. Minimum two (2) Electrical Service (Power Feed) Coordination Meetings with Palo Alto Electric Utilities – when required by the specific Work Order
 - iv. Minimum two (2) Coordination Meetings with Palo Alto Fire Department – when required by the specific Work Order
 - v. Participate in an I&C Standards Review Meeting with RWQCP Technology / SCADA Support Staff
 - vi. Project close-out Meeting
3. CONTRACTOR'S Submittals
- a. CONSULTANT shall use the online document tracking system to log and coordinate the submittal process.
 - b. CONSULTANT shall receive the submittals, including CONTRACTOR's red-line drawings, from the CONTRACTOR and check the submittals for general conformity with the Construction Contract requirements. If obvious deficiencies are apparent in the submittal, the CONSULTANT

- will reject and send the submittal back to the CONTRACTOR for correction.
 - c. CONSULTANT shall route the submittals to the ENGINEER for review and shall route the reviewed submittal back to the CONTRACTOR. The CONSULTANT shall review comments on the submittals to determine if additional follow-up with the CONTRACTOR and/or ENGINEER is warranted and to identify any scope changes.
 - d. CONSULTANT shall coordinate the ENGINEER's submittal review and shall track the status of shop drawing resubmittals with the CONTRACTOR.
 - e. In addition to the CONSULTANT, ENGINEER will review all design related submittals and all submittals for temporary facilities.
4. Request for Information/Clarification Process
- a. CONSULTANT shall utilize the online document tracking system for processing requests for design clarifications.
 - b. CONSULTANT shall receive all requests for information (RFIs) from the CONTRACTOR and determine if the request is a valid RFI;
 - i. If valid, ENGINEER will review the RFIs and provide design response. CONSULTANT will review the ENGINEER's response, verify acceptability of response and transmit the Clarification Response to the CONTRACTOR.
 - ii. If the request is not valid, CONSULTANT shall return the RFI to the CONTRACTOR with justifications.
 - c. CONSULTANT shall provide a response within 10 days to the CONTRACTOR for any administrative, field condition specific and general RFI.
 - d. ENGINEER shall prepare Design Clarifications where design issues are identified by the CONSULTANT, ENGINEER, or CITY. CONSULTANT will prepare the Clarification Letter for transmittal to the CONTRACTOR of the ENGINEER's Design Clarification and other clarifications.
 - e. CONSULTANT shall work with the CITY Project Manager to maintain an Error and Omission Log to document RFIs and RFCs that are a result of ENGINEER and CONTRACTOR errors in design and construction, respectively. The log shall record the hours spent by the ENGINEER to respond to the RFIs/ RFCs and associated cost impact to the construction. CITY may seek reimbursement from the ENGINEER and/or CONTRACTOR.
5. Change Order Preparation, Negotiation & Processing
- a. CONSULTANT shall review all change order requests (either initiated by the CITY or by the CONTRACTOR).
 - i. CONSULTANT shall utilize the online document tracking system to log, track, and process changes.
 - ii. CONSULTANT shall maintain Change Event files. These files will

compile all data related to specific items that arise that may have cost or time impacts or neither.

- b. CONSULTANT shall judge the validity and/or merits of all CONTRACTOR initiated change order requests. CONTRACTOR initiated change orders deemed unnecessary, or not substantiated by a deficiency in the construction documents will be returned to CONTRACTOR unapproved with an explanation.
 - c. CONSULTANT shall negotiate change orders with the CONTRACTOR, considering impact to the schedule, as well as, reasonableness of cost, and impact to total project budget. CONSULTANT shall provide updates regarding potential cost and schedule changes to CITY.
 - d. CONSULTANT shall prepare an independent cost estimate and/or verify the acceptability of the CONTRACTOR's cost proposal for each approved change request. At CITY's discretion, ENGINEER's opinion may be requested for specific equipment and material costs.
 - e. CONSULTANT shall prepare change orders using CITY's procedure for execution by the CITY and CONTRACTOR.
 - i. CONSULTANT shall prepare a Change Order Memorandum, if requested by the CITY, to provide additional background discussion for need of the change and reasonableness of cost and schedule impact.
 - ii. ENGINEER shall prepare design details for change requests as needed. CONSULTANT to coordinate schedule and distribution of design details.
 - iii. CONSULTANT shall prepare, and issue approved change order requests to the CONTRACTOR with the appropriate design documents as directed by the CITY.
 - f. In the event the CONTRACTOR encounters a time sensitive problem where time is not available to negotiate a settlement, CONSULTANT shall issue a field order per CITY's procedure.
 - i. All work done under a field order will be completed on a time and material basis. CONSULTANT to track actual time and material expended for the field order work.
 - ii. Field orders shall be reviewed and approved with the CITY prior to issuance.
6. Documentation of Environmental Compliance
- a. CONSULTANT will document compliance with environmental permitting and mitigation measures in accordance with the requirements of the environmental documents and regulatory permits.
7. Progress Payment
- a. CONSULTANT shall review the initial schedule of values (cost breakdown) prepared by the CONTRACTOR and generate a progress payment request form for the CONTRACTOR's use which is compatible with the SRF CONTRACTOR Spreadsheet (Form No. 259) and acceptable to SRF, Financial Assistance Division and EPA WIFIA.

- b. CONSULTANT shall review and process the progress payment requests and determine whether the amount requested reflects the actual status of the CONTRACTOR's work in place, materials on site and other contract requirements.
 - c. CONSULTANT shall verify CONTRACTOR's 'redlined' or 'as-built' drawings to ensure that they reflect the conditions in the field for that pay period.
 - d. CONSULTANT shall perform the appropriate administration, preparation and processing of the monthly progress payments to CONTRACTOR so the CITY can respond in accordance with the time periods set forth in the Public Contract Code.
 - e. CONSULTANT shall prepare the summary cover sheet for the progress payment requests which will be executed by CONSULTANT, CONTRACTOR and CITY.
 - f. CONSULTANT shall not recommend final payment to the CONTRACTOR until the CONSULTANT has determined CONTRACTOR has complied with the project closeout requirements, including submittals of record documents, warranties, and operations and maintenance manuals. CITY will release the retention only after a Notice of Completion has been recorded with the Santa Clara County Clerk's Recorder Office.
8. CONTRACTOR's Certified Payroll
- a. On a bi-weekly basis, or when otherwise requested by the CITY, State, or other agency or public inquiry, the CONSULTANT shall collect certified payrolls from the CONTRACTOR. Apart from the regular, bi-weekly collection, the CONSULTANT will obtain payroll records within 10 days of the CITY's request.
 - b. CONTRACTOR is responsible for submitting electronically their certified payroll records to the State Department of Industrial Relations.
 - c. CONSULTANT shall be responsible for documenting and conducting interviews of the CONTRACTOR's field staff/crew for compliance with CITY prevailing wage ordinance and WIFIA/SRF requirements (SF-1445).
9. Schedule
- a. CONSULTANT shall review CONTRACTOR's initial Baseline schedule submittal to determine whether it is realistic and prepared in accordance with the Contract Documents, that the milestone and Substantial Completion dates meet the overall goal for schedule and that no major conflicts exist. The CONSULTANT will advise CITY of the review determination and provide written comments to the CONTRACTOR.
 - b. CONSULTANT shall review the CONTRACTOR's schedule updates and provide written comments to the submitted update.
 - c. CONSULTANT shall review and evaluate the CONTRACTOR's requests for Contract Time extension and make written recommendations to the CITY regarding entitlement and the number of days, if any, to be added to

the Contract Time(s). If requested by the CITY, CONSULTANT will provide a written assessment of the time request. CONSULTANT shall negotiate schedule adjustments with the CONTRACTOR.

10. Field Quality Control (Inspectional Services)

a. CONSULTANT shall provide field observation services to monitor compliance with the Contract Documents.

i. CONSULTANT staff shall have sufficient training and experience regarding the specific construction activities being performed by CONTRACTOR.

1) CONSULTANT shall provide staff proportional to what is required to observe CONTRACTOR's activities.

2) CONSULTANT shall provide subconsultant(s) as needed to observe specialty work or increase staffing levels (see Special Inspections subsection below).

3) CITY may set an allowance on a task order specific basis for the *increased cost only* of inspectional services if required during off hours and on weekends. Consultant shall provide sufficient hours to cover all inspectional services anticipated at standard rates.

b. Reporting

i. CONSULTANT shall prepare daily inspection reports documenting observed field activities, field crews, CONTRACTOR equipment, and field problems. CONSULTANT shall collect and compile CONTRACTOR daily reports.

ii. CONSULTANT shall provide and maintain photographs of field activities for status monitoring of the project.

iii. CONSULTANT shall monitor record documents (redline drawings) on a bi-weekly basis to determine if they are being maintained by the CONTRACTOR and are in substantial conformance with the CONSULTANT's information/observations.

iv. CONSULTANT shall prepare a monthly report to include major work performed, outstanding issues, project photographs, schedule status, pending and executed change orders summary, and quality issues. This report shall also be part of CONSULTANT's monthly progress payment report.

c. Special Inspections

i. CONSULTANT shall furnish the materials testing and special inspections required to be performed for the Project. Special Inspection and materials testing includes, but is not limited to:

- 1) Soils testing for HazMat compliance
- 2) Soils compaction and relevant testing
- 3) Asphalt compaction and relevant testing
- 4) Concrete sampling and testing
- 5) Structural steel welding

- 6) Coating inspection
- 7) Electrical inspection
- 8) Special inspections as listed in the project specific design drawings and specs.

- ii. CONSULTANT shall schedule and coordinate the material testing services and have responsibility for the specialty inspections and testing services.

11. System Outages

- a. CONSULTANT shall review and evaluate the CONTRACTOR's system outage requests (SOR) in conjunction with the CITY. CONSULTANT shall assess the reasonableness of the duration of the requested shutdown.
- b. The SORs shall be reviewed and approved at least two weeks ahead of the actual outage/shutdown.
- c. CONSULTANT shall facilitate/coordinate shutdowns with the CONTRACTOR, CITY and ENGINEER.
 - i. CITY is responsible for reviewing and approving system outage request and duration, confirming the outage is properly planned, implementing the outage, and bringing services back online after the outage.

12. Means and Methods of Construction

- a. CONSULTANT shall not direct the means and methods of construction. CONTRACTOR shall be solely responsible for the means and methods of construction. Concerns or suggestions regarding the CONTRACTOR's means and methods shall be communicated to CITY and ENGINEER.

13. Safety

- a. CONSULTANT shall comply with appropriate regulatory, project and CITY codes in addition to CONSULTANT's Health and Safety Plan regarding necessary safety equipment and procedures used during performance of the CONSULTANT's work and shall take necessary precautions for safe operation of the CONSULTANT's work, and the protection of the CONSULTANT's personnel from injury and damage from such work.
- b. Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT's employees or sub-consultants at the construction/project site, shall relieve the CONTRACTOR and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending, or coordinating their work in accordance with the Contract Documents, City codes, and any health or safety precautions required by pertinent regulatory agencies. CONSULTANT and its personnel have no authority to exercise any control over any CONTRACTOR or other entity or their employees in connection with their work or any health or safety precautions.

14. Spare Parts

- a. CONSULTANT shall, in coordination with the ENGINEER and CITY, prepare a list of required spare parts from the specifications and vendor O&M Manuals or recommended spare parts lists.
- b. CONSULTANT shall inventory spare parts per the list; as they are delivered by the CONTRACTOR and transfer spare parts to the CITY. The transfer of part shall be documented via material transmittal, signed by Contractor, CONSULTANT and CITY.

15. Operation and Maintenance (O&M) Manuals

- a. CONSULTANT shall prepare a list of anticipated O&M Manuals and track the submittal and review process in the online document tracking system.
- b. CONSULTANT shall verify that the submitted O&M manuals are the correct and latest version, and that the 'lessons learned' and notes taken during startup and commissioning are included in the O&M manuals. CONSULTANT shall coordinate delivery of final hardcopies from CONTRACT to CITY.

16. Testing, Start-up and Training

- a. CONSULTANT shall coordinate training requirements and activities.
- b. ENGINEER shall provide design assistance during testing operations.
- c. CONSULTANT shall work with CONTRACTOR, ENGINEER and CITY on the development of the Testing and Startup Plan.
- d. CONSULTANT shall provide oversight and administration of training and testing.
- e. CONSULTANT shall coordinate the training with the CONTRACTOR, vendor and CITY staff. Some equipment may need training for third party personnel with whom the CITY may be contracting with. CITY will provide the vendor contact information for CONSULTANT to coordinate with. Trainings shall be coordinated so that key CITY staff can attend; schedule shall accommodate key CITY staff/ Plant operations shifts. Multiple training sessions for day shift and night shift operators may be required.
- f. CONSULTANT shall observe start-up and testing as the CITY's representative and maintain copies of start-up documentation in an organized binder that will be turned over at the end of the project.
- g. CONSULTANT shall attend training sessions and collect attendance sheets and copies of training material.
- h. If required by CITY, CONSULTANT shall coordinate production quality audio and video recording and editing of training sessions to be used for future training sessions. The final digital copy shall be labeled and have an introduction that indicates the type of training, the process area, the equipment name, the vendor(s) / manufacturer(s) if applicable, the date, and the CONTRACTOR.
- i. Refer CITY's Demonstration and Training Standards for more details.

17. Corrective Work Item List

- a. The CONSULTANT shall prepare and maintain a Corrective Work Item list (CWL) with the input from the CITY and ENGINEER.
- b. CONSULTANT shall confirm that the items identified in the CWL are completed in preparation for issuance of Substantial Completion Certificate (SCC).
- c. CONSULTANT shall prepare the SCC for execution by the CITY and the CONTRACTOR when the Corrective Work Items are completed to the CITY's, ENGINEER's and The CONSULTANT's satisfaction.

E. Project Closeout Phase Tasks

1. Punch List and Final Inspection

a. Punch List

- i. CONSULTANT shall in conjunction with the CITY prepare the list of outstanding deficiencies. CONSULTANT will prepare and issue the Punch List(s) from the list of deficiencies.
- ii. CONSULTANT will have primary responsibility for verifying that the Punch List work is complete.

b. Final Inspection

- i. CONSULTANT shall have primary responsibility for conducting the final inspection.
 - 1) CITY will participate and provide input on the final inspection.
 - 2) ENGINEER will provide design input on final inspection items if determined necessary by the CITY.
 - 3) CONSULTANT shall be responsible for oversight and review of the final inspection.

2. Warranty Coordination

- a. CONSULTANT shall maintain a warranty file in the online document tracking system. All warranty documentation shall be handed off to the CITY at conclusion of the contract.

3. Project Closeout

- a. CONTRACTOR shall furnish record (redlined, as-built) documents, which the CONSULTANT will review for correctness and transmit to ENGINEER for conforming and final issuance to CITY.
- b. CONSULTANT shall prepare necessary CITY documentation recommending acceptance of the completed work by the CITY.
- c. CONSULTANT shall turnover project documentation to the CITY in an orderly manner and in a timely manner after completion of the project and all Punch- list activities. The CONSULTANT will retain all change event files at the end of the project. The CITY shall have the right to request review and/or copies of the change events files.

EXHIBIT A-1

PROFESSIONAL SERVICES TASK ORDER

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

CONTRACT NO.

OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

- 1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
 - 1B. TASK ORDER NO.:
 2. CONSULTANT NAME:
 3. PERIOD OF PERFORMANCE: START: COMPLETION:
 4. TOTAL TASK ORDER PRICE: \$ _____
BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT \$ _____
 5. BUDGET CODE _____
COST CENTER _____
COST ELEMENT _____
WBS/CIP _____
PHASE _____
 6. CITY PROJECT MANAGER'S NAME & DEPARTMENT: _____
 7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A)
MUST INCLUDE:
 - SERVICES AND DELIVERABLES TO BE PROVIDED
 - SCHEDULE OF PERFORMANCE
 - MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
 - REIMBURSABLE EXPENSES, if any (with "not to exceed" amount)
 8. ATTACHMENTS: A: Task Order Scope of Services B (if any): _____
-

I hereby authorize the performance of the work described in this Task Order.

APPROVED:
CITY OF PALO ALTO

BY: _____

Name _____

Title _____

Date _____

I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.

APPROVED:
COMPANY NAME: _____

BY: _____

Name _____

Title _____

Date _____

EXHIBIT B

SCHEDULE OF PERFORMANCE

☒ Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.

EXHIBIT C COMPENSATION

CITY agrees to compensate CONSULTANT for on-call, as-needed, time-limited project support services performed in accordance with the terms and conditions of this Agreement, and as set forth in a specific Task Order budget schedule. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth in a specific Task Order.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories within a specific Task Order, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: NONE up to the not-to-exceed amount of \$0.00.

EXHIBIT C-1 SCHEDULE OF RATES

The applicable rate schedule by which CONSULTANT will be paid for Services rendered under this Agreement and its Task Order(s), if any, is set forth below as Exhibit “C-1”, entitled “SCHEDULE OF RATES”. The fee schedules attached hereto in Exhibit C-1 and C-2 shall apply during the first two years of the term of the Agreement. Thereafter, CONTRACTOR’s compensation rates shall be adjusted annually effective on the commencement of the 3rd year, as follows: Each unit price, hourly rates, and fee, as set forth the attached fee schedule, shall be adjusted by a percentage equal to the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics (CPI), published most immediately preceding the commencement of the applicable contract year, compared with the CPI published for the prior year. Notwithstanding the foregoing, in no event shall CONTRACTOR’s compensation rates be increased by an amount exceeding five percent of the rates effective during the immediately preceding contract year. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation as set forth herein shall be at no cost to the CITY.

CONSULTANT’s schedule of rates is as follows:

CHAPTER 8: PROPOSAL COST SHEET AND RATES

Tanner Pacific, Inc. Rate Sheet

Staff Title	2020-2023 Hourly Rates ¹
Principal	\$285.00
Senior Project/Construction Manager	\$265.00
Project/Construction Manager	\$190.00
Senior Project Engineer	\$171.00
Project Engineer	\$150.00
Inspector ²	\$190.00
Administrative Assistant	\$125.00
Intern	\$65.00

Explanations

- Services are provided on an hourly and expense basis.
- ¹ Effective dates 12/1/20 - 12/1/23
- ² Subject to California Prevailing Wage

Subconsultants

All Subconsultants invoiced at cost plus 10 percent.

Expenses

Direct expenses, as listed below, incurred in connection with the work, will be at cost:

- Delivery services
- Outside reproduction
- Travel outside the Bay Area
- All other extraordinary expenses invoiced at cost
- Tanner Pacific, Inc. Vehicles @ \$1,200 per month

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Subconsultant	2020-2023 Hourly Rates
Jacobs Engineering	
Robert DeLiso, PE	\$300.00
Samneet Singh	\$125.00
Tom Newland	\$260.00
Carl Begley	\$160.00
Jennifer Clarke	\$175.00
GHD	
Project Director, Sr CM	\$250.00
Project Manager, Sr CM	\$225.00
Construction Manager	\$215.00
Project Coordinator	\$135.00
Project Inspector	\$180.00
PMA Consulting	
Don Fredlund, PMP	\$324.00
Bruce Stephan, PE, JD, PMP	\$299.00
Angel Ripepi, PMP	\$267.00
Nader Moghtader, PMP	\$188.00
Nick Gendron	\$208.00
Sara Abolhassani, PMP	\$159.00
RGM Kramer, Inc.	
Ralph Caputo	\$125.00
Susan Kettlewell	\$120.00
Jim Keating	\$110.00
Todd Marshall	\$80.00
Administrative Staff	\$60.00
JHS Consulting	
John Schwarz	\$260.00
Red Brick Consulting	
Gregory Powers	\$190.00
Philip Larson	\$170.00
BACC	
NACE Prevailing Wage Billing Rates	\$115.00
Time x 1.5	\$149.94
Double Time	\$189.78
Truck/Equipment Charge	\$12.13



**CITY OF PALO ALTO ON-CALL SERVICES FEE SCHEDULE
CONSTRUCTION INSPECTION AND MATERIALS TESTING**

Effective January 1, 2021 through June 30, 2023

ENGINEERING SERVICES	UNIT RATE	UNIT
Principal/Principal Engineer	\$ 210.00	hour
Geotechnical Engineer	\$ 210.00	hour
Senior Engineer	\$ 190.00	hour
Project Engineer/Geologist	\$ 165.00	hour
Staff Engineer	\$ 150.00	hour
Assistant Engineer	\$ 130.00	hour
Field Supervisor	\$ 130.00	hour
Lab Technician	\$ 80.00	hour
INSPECTION SERVICES	UNIT RATE	UNIT
ICC/AWS Inspector with NDT Equipment	\$ 105.00	hour
ICC/AWS Inspector (Visual Only)	\$ 105.00	hour
ICC Certified Inspector	\$ 105.00	hour
Proofload Testing/Anchor Installation Inspector	\$ 105.00	hour
Mechanical Inspector	\$ 105.00	hour
Electrical Inspector	\$ 105.00	hour
Plumbing Inspector	\$ 105.00	hour
OSHPD IFC Premier Certified Firestop Inspector	\$ 110.00	hour
DSA Masonry/Shotcrete Inspector	\$ 120.00	hour
Waterproofing Technician	\$ 110.00	hour
Soils Inspector with Nuclear Gauge (Portal-to-Portal Charges Apply)	\$ 105.00	hour
SPECIALIZED SERVICES	UNIT RATE	UNIT
Pachometer	\$ 115.00	hour
In-Place Brick Shear Tests (Masonry) - Two-Person Crew (4-hour minimum)	\$ 210.00	hour
Ground Penetrating Radar (GPR)		
- One Man Crew	\$ 215.00	hour
- Two Man Crew	\$ 300.00	hour
Floor Flatness Testing:		
- Surveying/Inspection	\$ 170.00	hour
Phased Array Technician	\$ 135.00	hour
Profileograph Technician	\$ 135.00	hour
Profileograph Equipment	Quotation on Request	
CORING SERVICES	UNIT RATE	UNIT
Coring Machine Operator	\$ 145.00	hour
Helper (add per hour)	\$ 95.00	hour
Diamond Drill Bit Charges, per inch to 5"	\$ 8.00	inch
Diamond Drill Bit Charges, per inch 6" and over	Quotation on Request	
CONCRETE	UNIT RATE*	UNIT
Concrete Mix Design Review	\$ 285.00	each
Trial Batches, Prepared in Laboratory C192	\$ 970.00	each
Length Change of Concrete (Shrinkage), set of 3, ASTM C157, CT 530	\$ 420.00	each
Compression, 6X12 Cylinders, ASTM C 39, CT 521	\$ 35.00	each

* Based on standard turnaround times.
Rush tests are an additional 50%.

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CONSOLIDATED ENGINEERING LABORATORIES

Compression 4x8 Cylinders ASTM C 39	\$	35.00	each
Compression, Core (including end preparation), ASTM C 42	\$	105.00	each
Compression, 3X6 Cylinders Lightweight Insulating Concrete, ASTM C 495	\$	95.00	each
Grout Compression, 2X2 Cubes, each age, ASTM C 109	\$	60.00	each
Epoxy Grout 2x2 Cube Compression ASTM C 579	\$	60.00	each
Cylinders, Stored 60 days (hold cylinders)	\$	40.00	each
Splitting Tensile Strength, 6X12 Cylinders, ASTM C 496	\$	125.00	each
Unit Weight of Concrete Cylinders, ASTM C 567	\$	85.00	each
Unit Weight of Lightweight Insulating Concrete, ASTM C 495	\$	85.00	each
Compression Test of Lightweight Insulating Concrete, ASTM C 495	\$	95.00	each
Flexural Strength of Concrete, ASTM C 78	\$	90.00	each
Shotcrete Pre-Production Panel Evaluation, Up to 12" Thick	\$	1,200.00	each
Shotcrete Pre-Production Panel Evaluation, 12" to 24" Thick	\$	1,800.00	each
Shotcrete Panel Core Compression Test, ASTM C 42	\$	95.00	each
Chloride Ion Content, AASHTO T260	\$	210.00	each
SOIL MECHANICS		UNIT RATE*	UNIT
Moisture/Density Curve			
Standard Proctor ASTM D 698	\$	325.00	each
Modified Proctor ASTM D 1557	\$	350.00	each
Checkpoint (ASTM or Caltrans)	\$	165.00	each
California Impact, CT 216	\$	335.00	each
Rock Correction for Oversize Material, ASTM D4718/CT216	\$	125.00	each
Sieve Analysis			
Bulk Sample Gradation, ASTM C 136/C117/CT202	\$	205.00	each
Material Finer than #200 Sieve, ASTM C 117	\$	100.00	each
Soil Mechanics			
"R" Value, ASTM D 2844/CT 301	\$	440.00	each
Sand Equivalent, ASTM D 2419/CT 217	\$	130.00	each
Liquid Limit, Plastic Limit, & P.I. Atterberg Limits ASTM D4318	\$	200.00	each
California Bearing Ratio, 1 pt. (ASTM D1883)	\$	275.00	each
California Bearing Ratio, 3 pt. (ASTM D1883)	\$	755.00	each
California Bearing Ratio, 3 pt. (ASTM D1883) w/ 96 hour soak	\$	860.00	each
Moisture-Density Sample Tubes ASTM D2937	\$	75.00	each
Water Content of Soil and Rock ASTM D2216	\$	55.00	each
AGGREGATES		UNIT RATE*	UNIT
Sieve Analysis, Bulk Sample Gradation (Coarse & Fine), ASTM C136/C117/CT202	\$	195.00	each
Sieve Analysis, Material Finer than #200 Sieve, ASTM C 117/CT202	\$	95.00	each
Sieve Analysis, Coarse Agg (3" to #4), ASTM C136/CT202	\$	170.00	each
Sieve Analysis, Fine Agg (#4 to #200), ASTM C136/CT202	\$	170.00	each
Specific Gravity (Coarse), ASTM C 127/CT 206	\$	145.00	each
Specific Gravity (Fine), ASTM C 128/CT 207	\$	175.00	each
Absorption, Coarse Agg or Fine Agg, ASTM C 127/ASTM C 128	\$	105.00	each
Uncompacted Void Content of Fine Aggregate CT234	\$	160.00	each
Organic Impurities in Concrete Sand, ASTM C 40/ CT213	\$	130.00	each
L.A. Rattler, ASTM C 131 or C535/CT 211 (500 rev)	\$	315.00	each
Clay Lumps & Friable Particles ASTM C142	\$	160.00	each
Fractured Particles in Coarse Agg ASTM D5821	\$	175.00	each

* Based on standard turnaround times.
Rush tests are an additional 50%.

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Tanner Pacific, Inc.

(Revised June 16, 2021)

CITY OF PALO ALTO | RFP No. 179265

Rev. Dec.15, 2020



CONSOLIDATED ENGINEERING LABORATORIES

Lightweight Particles in Aggregate ASTM C123	\$	140.00	each
Staining of Lightweight Aggregate ASTM C641	\$	265.00	each
Sulfate Soundness (per sieve size), ASTM C 88	\$	140.00	each
Unit Weight of Aggregates, ASTM C 29	\$	115.00	each
Flat and Elongated Particles in Coarse Aggregate, ASTM D4791	\$	190.00	each
% Crushed Particles, CT 205	\$	265.00	each
Cleanness Value, CT 227	\$	160.00	each
Sand Equivalent, ASTM D 2419/CT 217	\$	135.00	each
Durability Index (Coarse or Fine Agg) ASTM D 3744/CT 229	\$	190.00	each
Moisture Content of Aggregate ASTM C566	\$	55.00	each
Potential Alkali Reactivity of Aggregates ASTM C1260	\$	1,000.00	each
C33 Coarse Aggregate Qualification Testing (ASTM C33)	\$	3,150.00	each
C33 Fine Aggregate Qualification Testing (ASTM C33)	\$	2,835.00	each
HOT MIX ASPHALT (HMA)		UNIT RATE*	UNIT
Bulk Sp. Gravity of Compacted HMA (Plant Mix) ASTM D2726/ CT 304, CT308	\$	100.00	each
Bulk Sp. Gravity of Compacted HMA (Lab Mix) ASTM D2726/ CT 304, CT308	\$	110.00	each
Bulk Sp. Gravity & Density of Compacted Asphalt Concrete ASTM D 2726	\$	75.00	each
Bulk Sp.Gr. & Density-Parafilm Coated Compacted Asphalt Conc. ASTM D 1188	\$	90.00	each
Theoretical Max Spec. Gravity (Rice Density) ASTM D2041/ CT 309	\$	175.00	each
Stabilometer Value including Compaction, ASTM D1560/ CT 366, per point	\$	180.00	each
Asphalt Content (Ignition Oven Method) ASTM D 6307/ CT382	\$	175.00	each
Ignition Oven Calibration Factor ASTM D6307/ CT382	\$	285.00	each
Asphalt Content (Solvent Extraction Method) ASTM D2172	\$	370.00	each
Sieve Analysis of Extracted Aggregate, ASTM D5444/CT 202	\$	190.00	each
Caltrans Complete HMA Tests (Rice or BSG, S-Value, Ignition, Extracted Gradation)	\$	1,000.00	each
Marshall Compaction (Lab Mix), set of 3, ASTM D 6926	\$	420.00	each
Marshall Compaction (Plant Mix), set of 3, ASTM D 6926	\$	315.00	each
Marshall Flow and Stability, per point, ASTM D 6926	\$	90.00	each
Effect of Moisture on AC (Tensile Strength Ratio) ASTM D4867/ CT 371	\$	1,890.00	each
Swell of Bituminous Mixtures, CT 304/305	\$	235.00	each
ASPHALTIC CEMENT		UNIT RATE*	UNIT
Penetration of Bituminous Materials at 77°F, ASTM D5/AASHTO T49	\$	75.00	each
Penetration of Bituminous Materials at 32°F to 158°F, ASTM D 5/AASHTO T49	\$	110.00	each
Kinematic Viscosity of Asphalt, ASTM D 2170/AASHTO T201	\$	180.00	each
Absolute Viscosity of Asphalt, ASTM D2170/AASHTO T201	\$	180.00	each
Viscosity (Asphalt Institute Method)	\$	205.00	each
Rolling Thin Film Test, ASTM 2872/Cal 346/AASHTO T240	\$	190.00	each
Residue by Evaporation, ASTM D244/AASHTO T59	\$	230.00	each
Extraction and Recovery, ASTM D2172/ASTM D 1856	\$	895.00	each
MASONRY		UNIT RATE*	UNIT
Concrete Blocks			
Compression, Gross Area, ASTM C 140	\$	115.00	each
Compression, Gross Area, Unusual Shape, ASTM C 67	\$	115.00	each
Compression, Net Area, ASTM C 140	\$	105.00	each
Absorption and Moisture, ASTM C 140	\$	160.00	each
Linear Shrinkage ASTM C 426	\$	170.00	each
Dimensional Measurement of Masonry Units ASTM C 140	\$	70.00	each

* Based on standard turnaround times.
Rush tests are an additional 50%.

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Bricks			
Absorption, with saturation Coefficient, ASTM C 67	\$	115.00	each
Compression, ASTM C 67	\$	90.00	each
Modulus of Rupture, ASTM C 67	\$	40.00	each
Grout			
Compression, Grout Prisms, ASTM C 1019	\$	80.00	each
Compression, Mortar Cylinders, ASTM C 780	\$	60.00	each
Compression, Composite Prisms, ASTM C 1314	\$	195.00	each
Compression, Masonry Core, ASTM C 140	\$	110.00	each
Shear, Masonry Core, CCR Title 24	\$	125.00	each
REINFORCING STEEL - ASTM A 615/A706		UNIT RATE*	UNIT
Tensile Strength and Bend Test			
Samples, Size #3 - #10	\$	110.00	each
Samples, Size #11	\$	135.00	each
Samples, Size #14	\$	225.00	each
Samples, Size #18 (Full Section)	\$	475.00	each
PRESTRESSING STEEL - ASTM A 416		UNIT RATE*	UNIT
Uncoated 7 Wire Strand, 1/4" to 1/2"			
Yield Strength, Breaking Strength, and Elongation (Note: for Vinyl Coated Strands, add \$ 45.00 per test; for Modulus of Elasticity, add \$ 45.00 per test)	\$	315.00	each
Breaking Strength Only	\$	205.00	each
STRUCTURAL STEEL (mild steel not over one inch thick)		UNIT RATE*	UNIT
Tensile Strength, ASTM A 370 (test only)			
Samples, Under 1-1/2 square inch in cross section	\$	135.00	each
Samples, 1-1/2 square inch and over in cross section	\$	185.00	each
Chemical Analysis	\$	200.00	each
Bending	\$	85.00	each
Anchor Bolts, ASTM F1554, tensile	\$	200.00	each
High Strength Bolts, Nuts, and Washers, ASTM A 325, A 490, A 449			
Bolt Assembly Test	\$	275.00	each
Bolts Proof Load and Ultimate	\$	110.00	each
Nuts Proof Load	\$	60.00	each
Hardness (Rockwell)	\$	30.00	each
WELDMENT TESTING (mild steel not over one inch thick)		UNIT RATE*	UNIT
Transverse Tensile	\$	135.00	each
Transverse Side Bend	\$	100.00	each
Transverse Root and Face Bend	\$	100.00	each
Macroetch	\$	100.00	each
0.505" Tensile Specimen	\$	135.00	each
Charpy V-Notch Specimen		Quotation on Request	
Preparation of WPS, PQR, or Welder Certificate	\$	125.00	each
NONDESTRUCTIVE TESTING		UNIT RATE	UNIT
Radiography			
Radiographic Testing-Weld Procedure Qualification (physical testing not included)	\$	550.00	each
Consultation	\$	130.00	hour
One-Person Crew	\$	130.00	hour
Film	\$	20.00	each

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* Based on standard turnaround times.
Rush tests are an additional 50%.



CONSOLIDATED ENGINEERING LABORATORIES

Magnetic Particle Level III (ASNT)	\$	135.00	hour
Magnetic Particle Level II (ASNT)	\$	130.00	hour
Ultrasonic Level III (ASNT)	\$	135.00	hour
Ultrasonic Level II (ASNT)	\$	130.00	hour
Dye Penetrant Level III (ASNT)	\$	135.00	hour
Dye Penetrant Level II (ASNT)	\$	130.00	hour
ROOFING		UNIT RATE*	UNIT
Ply Count and Asphalt by Difference, ASTM D 2829	\$	160.00	each
Weight Analysis, ASTM D 2829	\$	85.00	each
FIREPROOFING		UNIT RATE*	UNIT
Density of Sprayed on Fireproofing, ASTM E 605/UBC 43-8	\$	80.00	each
Cohesion/Adhesion, ASTM E 736	\$	75.00	each
FIRE/LIFE SAFETY SYSTEMS		UNIT RATE*	UNIT
Fire/Life Safety Systems Inspection	\$	130.00	hour
Mechanical Engineer	\$	245.00	hour
Staff Engineer	\$	180.00	hour
Final Affidavit (Request 6 Working Days Advance Notice)	Quotation on Request		
GEOTEXTILE FABRIC		UNIT RATE*	UNIT
Tensile Strength by Grab Method	\$	370.00	each
Puncture Resistance, Index, ASTM D 4833	\$	254.00	each
Trapezoidal Tear	\$	281.00	each
Mass Per Unit Area, ASTM D 3776	\$	188.00	each
Simulated Asphalt Retention, ASTM D 4830	\$	463.00	each
Unit Weight Analysis, ASTM S 2329	\$	80.00	each
Ply Count and Void Analysis, ASTM D 2329	\$	150.00	each
CEMENT		UNIT RATE*	UNIT
Storage of Grab Sample, 60 days	\$	22.00	each
Cement Content of Hardened Concrete, ASTM C 1084	\$	2,460.00	each
GFRC PANEL TEST		UNIT RATE*	UNIT
Flexural Testing, per P.C.I Recommended Practice	\$	71.00	each
Pullout Testing of Anchors, per P.C.I. Recommended Practice	\$	116.00	each
Fiberwrap Testing (ASTM D3039)	\$	610.00	set
SPECIALTY GEOTECHNICAL TESTING		UNIT RATE	UNIT
Sieve Analysis, Minus #200 by Wash ASTM D1140	\$	85.00	each
Consolidation (ASTM D2435, D4546)	\$	190.00	each
Time-Consolidation (ASTM D2435)	\$	85.00	each
Collapse/Swell (ASTM D4546)	\$	100.00	each
Unconfined Compressive Strength (ASTM D2166)	\$	115.00	each
Direct Shear (3 pt.)	\$	1,050.00	each
California Bearing Ratio, 1 pt. (ASTM D1883)	\$	265.00	each
California Bearing Ratio, 3 pt. (ASTM D1883)	\$	630.00	each
Water Soluble Sulfate	\$	60.00	each
pH (ASTM D4972)	\$	80.00	each
Lab Resistivity	\$	100.00	each
MISCELLANEOUS GEOTECHNICAL CHARGES		UNIT RATE	UNIT
Vehicle Charges (Over 40-Mile Radius)			
Truck, 2-Wheel Drive	\$	0.50	mile

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* Based on standard turnaround times.
Rush tests are an additional 50%.



Truck, 4-Wheel Drive	\$	0.60	mile
All Other Direct Project Expenses (such as contract drilling and backhoe services, special equipment rental, commercial travel, protective clothing, shipping, etc.)			Cost + 15%
Clerical Services	\$	78.00	hour
MISCELLANEOUS TESTS & INSPECTIONS		UNIT RATE	UNIT
Calibration of Hydraulic Rams	\$	250.00	each
Universal Testing Machine with Technician	\$	275.00	hour
Instron Testing Machine with Technician	\$	275.00	hour
Windsor Test Probes			Quotation on Request
Weld Procedure Review	\$	275.00	each
Expert Witness	\$	3,000.00	day
BASIS OF CHARGES		UNIT RATE	UNIT
<i>The proposed unit rates will be in effect through June 30, 2023. Thereafter, the unit rates are subject to an annual increase of four and one-half percent (4.5%) per year to mitigate the annual operating cost increases.</i>			
Work Over 8 Hours Per Day			Time and One-Half
Work Over 12 Hours, Monday through Friday			Double Time
Work on Saturdays			Time and One-Half
Work Over 8 Hours on Saturday			Double Time
Work on Sundays/Holidays			Double Time
Swing or Graveyard Shift Premium	\$	12.50	hour
Work from 0 to 4 Hours			4-Hour Minimum Billing
Work from 4 to 8 Hours			8-Hour Minimum Billing
Show-Up Time			2-Hour Minimum Billing
Same-Day Service Call Requests	\$	200.00	each
Sample Pick-Up	\$	90.00	trip
Premium Sample Pick-Up (after 4 PM, before 5 AM, Weekends and Holidays)			2 x Sample Pick-Up Rate
Trip Charge	\$	100.00	trip
Laboratory Testing - Rush Fee			Add 50% to Testing Cost
Technician with Nuclear Gauge			Portal-to-Portal
Final Affidavit per each Applicable Permit (Request 6 working days in advance)	\$	400.00	each
DSA Interim Verified Reports	\$	150.00	each
Extra Copies (Over 4 per Issue Date) of Inspection Reports and Final Affidavit	\$	20.00	each
Reports on CD	\$	150.00	each
Project Engineering and Management			8% of Fees
Credit Card Payment of Fees			2.5% Premium
Certified Payroll Processing			\$125.00 per invoice
Reimbursables			Cost + 15%
QA/QC Plan Written Procedures			Quotation on Request
Out of Area Services (Beyond 40-Mile Radius)			As Listed Below:
Travel Time			Basic Hourly Rate
Mileage	\$	0.60	mile
Per-diem, Including Lodging	\$	120.00	day

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* Based on standard turnaround times.
Rush tests are an additional 30%.

EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?companyid=25569>

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

Professional Services
Rev. Dec.15, 2020

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP

EXHIBIT E

DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

This Exhibit shall apply only to a contract for public works construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONSULTANT without proof that CONSULTANT and its listed subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions. City requires CONSULTANT and its listed subcontractors, if any, to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. This Exhibit E applies in addition to the provisions of Section 26 (Prevailing Wages and DIR Registration for Public Works Contracts) of the Agreement.

CITY provides notice to CONSULTANT of the requirements of California Labor Code Section 1771.1(a), which reads:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

This Project is subject to compliance monitoring and enforcement by DIR. All contractors must be registered with DIR per Labor Code Section 1725.5 in order to submit a bid. All subcontractors must also be registered with DIR. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

CITY gives notice to CONSULTANT and its listed subcontractors that CONSULTANT is required to post all job site notices prescribed by law or regulation.

CONSULTANT shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

CITY requires CONSULTANT and its listed subcontractors to comply with the requirements of Labor Code Section 1776, including but not limited to:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem

wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONSULTANT and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONSULTANT and its listed subcontractors, respectively.

At the request of CITY, acting by its Project Manager, CONSULTANT and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the CITY Project Manager within ten (10) days of receipt of CITY's request.

☒ CITY requests CONSULTANT and its listed subcontractors to submit the certified payroll records to CITY's Project Manager at the end of each week during the Project.

If the certified payroll records are not provided as required within the 10-day period, then CONSULTANT and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONSULTANT.

Inform CITY's Project Manager of the location of CONSULTANT's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to CITY's Project Manager within five (5) business days of any change of location of those payroll records.

Eight (8) hours labor constitutes a legal day's work. CONSULTANT shall forfeit as a penalty to CITY, \$25.00 for each worker employed in the execution of the Agreement by CONSULTANT or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Sections 1810 through 1815 thereof, except that work performed by employees of CONSULTANT or any subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1&1/2) times the basic rate of pay, as provided in Section 1815.

CONSULTANT shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700 (Labor Code 1861). CONSULTANT shall sign and file with the CITY a statutorily prescribed statement acknowledging its obligation to secure the payment of workers' compensation to its employees before beginning work (Labor Code 1861). CONSULTANT shall post job site notices per regulation (Labor Code 1771.4(a)(2)).

CONSULTANT shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

Exhibit F
Claims for Public Contract Code Section 9204 Public Works Projects

The provisions of this Exhibit are provided in compliance with Public Contract Code Section 9204; they provide the exclusive procedures for any claims pursuant to Public Contract Code Section 9204 related to the Services performed under this Agreement.

1. Claim Definition. “Claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- (B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- (C) Payment of an amount that is disputed by the City.

2. Claim Process.

(A) Timing. Any Claim must be submitted to City in compliance with the requirements of this Exhibit no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.

(B) Submission. The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Exhibit, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(C) Review. Upon receipt of a Claim in compliance with this Exhibit, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.

(D) If City Council Approval Required. If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail,

return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(E) Payment. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

3. Disputed Claims

(A) Meet and Confer. If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Exhibit within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement.

(B) Mediation. Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.

(i) For purposes of this paragraph 3.B, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(ii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. City's Failure to Respond. Failure by the City to respond to a Claim from the Contractor within the time periods described in this Exhibit or to otherwise meet the time requirements of this Exhibit shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time

requirements of this Exhibit, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

5. Interest. Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.

6. Approved Subcontractor Claims. If an approved subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

7. Waiver of Provisions. A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.