Consulting Services Agreement between
The City of Citrus Heights and
MARIPOSA SAFE ROUTES TO SCHOOL PHASE 3

(FHWA assisted A&E projects)

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ARTICLE I. INTRODUCTION

This contract for consulting services is made by and between the City of Citrus Heights (“CITY”) and __________ (“CONSULTANT”) (“together referred to as the “Parties”) as of __________ 2018 (the “Effective Date”).

The Contract Administrator for City will be Leslie Blomquist, Senior Civil/Traffic Engineer.

A. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT’s Cost Proposal dated __________. The approved CONSULTANT’s Cost Proposal is attached hereto as Exhibit A and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

B. CONSULTANT agrees to indemnify, defend with counsel acceptable to CITY, and hold harmless CITY, its officers, officials, agents, and employees from any and all liability, loss, claims, demands, expenses, and costs, including without limitation, attorney’s fees, costs and fees of litigation, arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse CITY for any expenditure, including reasonable attorneys’ fees, incurred by CITY in defending against claims resulting from the negligent acts, errors, or omissions of CONSULTANT.

C. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of CITY.

D. Without the written consent of CITY, this contract is not assignable by CONSULTANT either in whole or in part.

E. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the Parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the Parties hereto.

F. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT’s expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II. STATEMENT OF WORK

Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to CITY the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

CONSULTANT shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure CONSULTANT performs services in accordance with the Standard of Performance, CONSULTANT shall, immediately upon receiving CITY’s request, reassign such persons.

ARTICLE III. CONSULTANT’S REPORTS OR MEETINGS
A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. CONSULTANT’s Project Manager shall meet with CITY’s Contract Administrator, as needed, to discuss progress on the contract.

ARTICLE IV. PERFORMANCE PERIOD (Verbatim)

A. This contract shall go into effect on _____ (DATE)_____, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY’S Contract Administrator. The contract shall end on ___(DATE)_____, unless extended by contract amendment.

B. CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by CITY.

ARTICLE V. ALLOWABLE COSTS AND PAYMENTS (Verbatim)

A. The method of payment for this contract will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT’S Cost Proposal, unless additional reimbursement is provided for by contract amendment.

In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY’s approved overhead rate set forth in the Cost Proposal. In the event that CITY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by CITY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph “H” shall not be exceeded, unless authorized by contract amendment.

B. In addition to the allowable incurred costs, CITY will pay CONSULTANT a fixed fee of $$(AMOUNT)$$. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

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

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

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT’s fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, CITY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by CITY’s Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due CITY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT’s work. Invoices shall be mailed to CITY’s Contract Administrator at the following address:

CITY: City of Citrus Heights  
Contract Administrator  STUART HODGKINS  
6360 Fountain Square Drive  
Citrus Heights, CA 95621

H. The total amount payable by CITY including the fixed fee shall not exceed $\text{(Amount)}.

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by CITY’s Contract Administrator.

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

ARTICLE VI. TERMINATION (Verbatim)

A. CITY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

B. CITY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, CITY may proceed with the work in any manner deemed proper by CITY. If CITY terminates this contract with CONSULTANT, CITY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to CITY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

C. The maximum amount for which the CITY shall be liable if this contract is terminated is \text{amount} dollars.

ARTICLE VII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.

ARTICLE VIII. RETENTION OF RECORDS/AUDIT (Verbatim)

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code section 8546.7; CONSULTANT, subconsultants, and CITY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All Parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, CITY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

ARTICLE IX. AUDIT REVIEW PROCEDURES (Verbatim)

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by CITY’S Chief Financial Officer/Finance Director.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by CITY’S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, it is CONSULTANT’s responsibility to ensure federal, state, or CITY officials are allowed full access to the CPA’s work papers, including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or CITY have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

ARTICLE X. SUBCONTRACTING (Verbatim)

A. Nothing contained in this contract or otherwise, shall create any contractual relation between CITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to CITY for the acts and
omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT’s obligation to pay its subconsultant(s) is an independent obligation from CITY’S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by CITY’s Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by CITY.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by CITY’s Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI. EQUIPMENT PURCHASE (Verbatim)

A. Prior authorization in writing, by CITY’s Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONSULTANT’s Cost Proposal and exceeding $5,000 prior authorization by CITY’s Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: “CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT’s expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY.” 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

ARTICLE XII. STATE PREVAILING WAGE RATES (Verbatim)

A. CONSULTANT shall comply with the State of California’s General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
B. Any subcontract entered into as a result of this contract, if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

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

ARTICLE XIII. CONFLICT OF INTEREST (Verbatim)

A. CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this contract, or any ensuing CITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing CITY construction project, which will follow.

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

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

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

ARTICLE XIV. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

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

ARTICLE XV. PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of
any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit to CITY Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

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

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI. STATEMENT OF COMPLIANCE

A. CONSULTANT’s signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

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

Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to CITY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XVIII. FUNDING REQUIREMENTS

A. It is mutually understood between the Parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both Parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

B. This contract is valid and enforceable only, if sufficient funds are made available to CITY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this contract in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

D. CITY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XIX. CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the Parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY’s Contract Administrator.
C. There shall be no change in CONSULTANT’s Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by CITY’s Contract Administrator.

ARTICLE XX. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

A. This contract is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is **XX** %. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CITY deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

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

G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants” CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT’s authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants” is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY’s Contract Administrator within 30 days.

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

ARTICLE XXII. DISPUTES
A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of CITY’s Contract Administrator and Rhonda Sherman, Community Services Director, who may consider written or verbal information submitted by CONSULTANT.

B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by CITY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

ARTICLE XXIII. INSPECTION OF WORK
CONSULTANT and any subconsultant shall permit CITY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV. SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, CITY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXV. INSURANCE

A. Prior to commencement of the work described herein, CONSULTANT shall furnish CITY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than two million dollars ($2,000,000) per occurrence and four million dollars ($4,000,000) aggregate. Insurance shall be a self-insured retention or deductible of no more than $100,000.

B. The Certificate of Insurance will provide:
   1. That the insurer will not cancel the insured’s coverage without 30 days prior written notice to CITY.
   2. That CITY, its officers, officials, agents, employees, and volunteers are included as additional insureds, but only insofar as the operations under this contract are concerned.
   3. That CITY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of CITY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, CITY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

ARTICLE XXVI. OWNERSHIP OF DATA
A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in CITY; and no further agreement will be necessary to transfer ownership to CITY. CONSULTANT shall furnish CITY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by CITY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

E. CITY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII. CLAIMS FILED BY CITY’s CONSTRUCTION CONTRACTOR

A. If claims are filed by CITY’s construction contractor relating to work performed by CONSULTANT’s personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with CITY’S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT’s personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT’s personnel services under this contract.

C. Services of CONSULTANT’s personnel in connection with CITY’s construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

ARTICLE XXVIII. CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to CITY’s operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by CITY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or CITY’s actions on the same, except to CITY’s staff, CONSULTANT’s own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by CITY, and receipt of CITY’S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than CITY.

ARTICLE XXIX. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXX. EVALUATION OF CONSULTANT

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

ARTICLE XXXI. RETENTION OF FUNDS

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

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

ARTICLE XXXII. NOTIFICATION

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

Additional terms and conditions for this contract are set forth in Exhibit B, attached hereto and incorporated herein. In the event that there are any conflicts between Exhibit B and this contract, the terms and conditions of Exhibit B shall prevail.

ARTICLE XXXIV. CONTRACT

The two Parties to this contract, who are the before named CONSULTANT and the before named CITY, hereby agree that this contract, including all exhibits, constitutes the entire agreement which is made and concluded in duplicate between the two Parties. Both of these Parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF CITRUS HEIGHTS               CONSULTANT

Christopher W. Boyd, City Manager               [NAME, TITLE]

Attest:

Amy Van, City Clerk

Approved as to Form:

Ruthann G. Ziegler, City Attorney
EXHIBIT B
ADDITIONAL TERMS

1. INDEMNIFICATION.
To the fullest extent permitted by law, CONSULTANT shall indemnify, defend with counsel acceptable to CITY, and hold harmless CITY and its officers, officials, employees, agents and volunteers (collectively, “Indemnitees”) from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney’s fees, costs and fees of litigation, (collectively, “Liability”) of every nature arising out of or in connection with CONSULTANT’s performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of CITY. If CONSULTANT is performing design professional services, CONSULTANT’s obligations under this section shall be limited to the extent required by Civil Code section 2782.8.

Acceptance by CITY of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be been determined to apply.

In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

2. INSURANCE.
Before beginning any services under this Agreement, CONSULTANT, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the CONSULTANT’s bid or proposal. CONSULTANT shall be fully responsible for the acts and omissions of its subcontractors or other agents.

2.1 **Workers’ Compensation.** CONSULTANT shall, at its sole cost and expense, maintain Statutory Workers’ Compensation Insurance and Employer’s Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT in the amount required by applicable law. The requirement to maintain Statutory Workers’ Compensation and Employer’s Liability Insurance may be waived by the CITY upon written verification that CONSULTANT is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

2.2 **Commercial General and Automobile Liability Insurance.**

2.2.1 **General requirements.** CONSULTANT, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than $2,000,000 per occurrence and $4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.
2.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

2.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.

b. CITY, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the CONSULTANT, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the CONSULTANT. Coverage can be provided in the form of an endorsement to the CONSULTANT’s insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.

c. For any claims related to this Agreement or the work hereunder, the CONSULTANT’s insurance covered shall be primary insurance as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the CONSULTANT’s insurance and non-contributing.

d. The policy shall cover inter-insured suits and include a “separation of Insureds” or “severability” clause which treats each insured separately.

e. CONSULTANT agrees to give at least 30 days prior written notice to CITY before coverage is canceled or modified as to scope or amount.

2.3 **Professional Liability Insurance.**

2.3.1 **General requirements.** CONSULTANT, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than $1,000,000 per occurrence or claim covering the CONSULTANT’s errors and omissions.

2.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
d. A copy of the claim reporting requirements must be submitted to the CITY for review prior to the commencement of any work under this Agreement.

2.4 All Policies Requirements.

2.4.1 Submittal Requirements. CONSULTANT shall submit the following to CITY prior to beginning services:

a. Certificate of Liability Insurance in the amounts specified in this Agreement; and

b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

2.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests’ rating of no less than A: VII.

2.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the CONSULTANT shall have a self-insured retention or deductible of no more than $100,000.

2.4.4 Wasting Policies. No policy required herein shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

2.4.5 Waiver of Subrogation. CONSULTANT hereby agrees to waive subrogation which any insurer or contractor may require from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its employees, agents, and subcontractors.

2.4.6 Subcontractors. CONSULTANT shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and CONSULTANT shall ensure that CITY, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

2.4.7 Excess Insurance. If CONSULTANT maintains higher insurance limits than the minimums specified herein, CITY shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

2.5 Remedies. In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order CONSULTANT to stop work under this Agreement and withhold any payment that becomes due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

3. LICENSES & PERMITS.

CONSULTANT represents and warrants to CITY that CONSULTANT and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits,
consultations, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, CONSULTANT and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from CITY.

4. ASSIGNMENT AND SUBCONTRACTING.

CITY and CONSULTANT recognize and agree that this Agreement contemplates personal performance by CONSULTANT and is based upon a determination of CONSULTANT’s unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to CITY for entering into this Agreement was and is the professional reputation and competence of CONSULTANT. CONSULTANT may not assign this Agreement or any interest therein without the prior written approval of the CITY Manager, or his or her designee. CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the CITY Manager, or his or her designee.

5. GOVERNING LAW & VENUE

In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in Sacramento County or in the United States District Court for the Eastern District of California. The laws of the State of California shall govern this Agreement.

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