

RESOLUTION NO. 2016-076

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE TWO PROFESSIONAL  
SERVICES CONTRACTS WITH WILLDAN ENGINEERING (ONE CONTRACT FOR  
STATE AND FEDERAL FUNDED WORK AND THE OTHER CONTRACT FOR ALL  
OTHER WORK) TO PROVIDE SERVICES TO THE CITY OF ELK GROVE  
DEPARTMENT OF PUBLIC WORKS**

**WHEREAS**, the City of Elk Grove utilizes consultants to perform most of the services within the Department of Public Works; and

**WHEREAS**, the existing professional services contracts for Public Works services will expire on November 8, 2016; and

**WHEREAS**, a continuation of public works services is vital to the protection of public safety where a lapse of having a contract for these services is unacceptable; and

**WHEREAS**, the City has followed Federal and State regulations as well as the City's purchasing ordinance requirements by issuing a Request for Qualifications to solicit these services (one contract for State and Federal funded work and the other contact for all other work) and received statements of qualifications on November 16, 2015; and

**WHEREAS**, Willdan Engineering was determined to be the most qualified firm and staff has negotiated fair and reasonable contract terms that are acceptable to Willdan Engineering.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute two professional services contract with Willdan Engineering to perform the Department of Public Works services.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 27<sup>th</sup> day of April 2016.

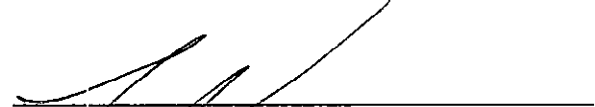


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GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
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JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

# CITY OF ELK GROVE



## CONSULTANT CONTRACT FOR **Federal/State Funded Project Management Services**



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## CONTRACT FOR SERVICES

THIS CONTRACT is made on May 1, 2016, by and between the City of Elk Grove, a municipal corporation (the "City") and Willdan Engineering (the "Consultant"), collectively referred to as the "Parties."

### WITNESSETH

WHEREAS, the Consultant has presented a proposal to provide professional services, which services are identified in the Scope of Work attached hereto and incorporated herein as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, the City desires to hire Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

### 1. SCOPE OF SERVICES

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the Scope of Work, attached hereto and incorporated herein by reference, and as set forth in individual task orders issued by the City to Consultant. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any exhibits shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. The terms and conditions of this Contract shall control all Task Orders ("Task Orders")

B. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

### 2. TERM OF CONTRACT

A. This Contract shall go into effect on May 1, 2016 ("Effective Date"). Consultant shall commence work after notification to proceed by the City's Public Works Director or his/her authorized representative. The Contract shall end on May 1, 2019 unless earlier terminated pursuant to Section 12 of this Contract or unless extended by Contract amendment. The Contract may be extended by mutual agreement of the Parties for up to an additional 2 years. Task Orders previously covered under contract number C-10-300 shall be transferred to this Contract as described in the Scope of Work as if they had been initiated by this Contract by mutual agreement of the Parties.



B. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Contract, the terms of the Contract may be extended by Contract amendment.

### **3. SCHEDULE FOR PERFORMANCE**

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the "Schedule of Performance") assigned to a project on a project by project basis as identified in executed Task Orders and pursuant to Exhibit B attached hereto and incorporated herein by this reference. Deviations from the time schedule stated in the Schedule of Performance of each Task Order may be made with the written approval of the City's Public Works Director, or his/her authorized representative. Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4 and/or termination of the Contract.

### **4. COMPENSATION**

A. The total amount paid to Consultant under this Contract shall not exceed \$3,150,000.00. Consultant will be reimbursed for hours worked at the hourly billing rates specified in Exhibit C attached hereto and incorporated herein by this reference. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s) and the applicable hourly rate. These rates are only adjustable in accordance with Exhibit C.

B. In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the executed Task Order. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the Task Order.

C. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, as set forth in the Contract at the discretion of the City's Public Works Director, or his/her authorized representative.

D. When milestone cost estimates are included in the Task Order, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Public Works Director or his/her authorized representative before exceeding such estimate.

E. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

F. Consultant shall not commence performance of work or services until notification to proceed has been issued by City's Public Works Director. No payment will be made prior to approval or for any work performed prior to approval of this Contract.

G. A Task Order is of no force or effect until executed by an authorized representative of City. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by City.



H. Consultant will not be allowed to add a markup on all sub-consultant and vendor invoices.

I. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's Public Works Director or his/her authorized representative of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Task Order and shall reference this Contract number, project title and Task Order number. Credits due City that include any equipment purchased under the provisions of Section 16 (Property of City) of this Contract, must be reimbursed by Consultant prior to the expiration or termination of this Contract. Invoices shall be mailed to City's Public Works Director or his/her authorized representative at the following address:

City of Elk Grove  
Attn: Finance Department  
8401 Laguna Palms Way  
Elk Grove, California 95758

J. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order shall be written which extends beyond the expiration date of this Contract.

K. The total amount payable by City for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by Task Order amendment.

L. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment shall be made until the deliverable has been satisfactorily completed.

M. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

N. The total amount payable by City for all Task Orders resulting from this Contract shall not exceed the Contract amount. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Contract through Task Orders.

O. All subcontracts in excess of \$25,000 shall contain the above provisions.

## 5. TASK ORDERS

The following process has been established for the issuance of Task Orders under this Contract:

A. The City's Public Works Director or his/her authorized representative shall identify a project and the scope of services to be performed by Consultant under each Task Order. The City's Public Works Director or his/her authorized representative shall also provide the name of the



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designated City Project Coordinator. The project and the scope of services will be delivered to Consultant for review.

B. Within ten (10) calendar days of receiving the project and the scope of services, Consultant shall prepare a detailed draft task order including the scope of services, project deliverables, period of performance, project schedule for each Task Order as assigned. The task order shall contain an estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. Such Task Orders shall be negotiated and agreed upon by the Public Works Director and Consultant.

C. Task Orders shall be executed by Consultant and the City's Public Works Director. An executed Task Order shall serve as notice to proceed with the scope of services under each Task Order.

D. Changes in the scope of services and or fee schedule for a given Task Order shall be negotiated and executed via Task Order amendment.

## 6. NOTICES

A. Consultant shall transmit any notices to the City's Public Works Director or his/her authorized representative, with copy to City Attorney, required by this Contract, to City by mail as follows:

City of Elk Grove  
Attn: Public Works Department  
8401 Laguna Palms Way  
Elk Grove, California 95758

B. City shall transmit payments on invoiced amounts, and any notices required by this Contract to Consultant as follows:

Daniel Chow, President/CEO  
Willdan Engineering  
2401 E. Katella Ave., Suite 300  
Anaheim, CA 92806-6073

## 7. PROFESSIONAL SERVICES

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any information, confidential or otherwise, relative to the work of City or the operations or procedures of City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to the City whether perceived or actual.



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## **8. FEDERAL/STATE REQUIREMENTS**

### **A. Cost Principles and Administrative Requirements.**

1. Consultant agrees that the Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR), Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of the cost of individual items.
2. Consultant agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
3. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.
4. All subcontracts in excess of \$25,000 shall contain the above provisions.

### **B. Conflicts of Interest**

1. Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this Contract, or any ensuing City construction project. Consultant shall provide City with a list of current clients who may have a financial interest in the outcome of this Contract, and any ensuing City construction project, which will follow.
2. Consultant hereby certifies that Consultant does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Contract.
3. Any subcontract in excess of \$25,000 entered into by Consultant as a result of this Contract, shall include all of the requirements of this section.
4. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant shall 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.
5. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with a construction contract with this Contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for that same construction project resulting from this Contract.



C. Rebates, Kickbacks or Other Unlawful Consideration

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.

D. Prohibition Against Expending Local Agency, State, or Federal Funds for Lobbying

1. Consultant certifies to the best of Consultant's knowledge and belief that:
  - a. No state, federal or local agency 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.
  - b. 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 Exhibit F-2, "Disclosure of Lobbying Activities," in accordance with its instructions.
2. 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 Contract 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.
3. Consultant agrees by signing this document that Consultant 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.

E. Disadvantaged Business Enterprise

The overall Contract DBE Goal shall be 5%. Consultant shall comply with City's





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disadvantaged business enterprise goals as set forth in each individual Task Order as issued.

1. Disadvantaged Business Enterprise (DBE) Participation.

- a. This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". 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 will be set forth in each Task Order issued under this Contract. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit F-4), or in the Consultant Contract DBE Commitment (Exhibit F-3) incorporated as part of the Task Order. 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 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 contracts. Failure of 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, regardless of amount, shall contain all of the provisions of Section 7.E Disadvantaged Business Enterprise (DBE) Participation.

2. Performance of DBE Consultant and other DBE Subconsultants and Suppliers.

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



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- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
  - c. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.
  - d. A DBE firm may be terminated only with prior written approval from the City's Public Works Director or his/her authorized representative and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting the City's Public Works Director or his/her authorized representative consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
3. Prompt Payment of Funds Withheld to Subcontractors.
- a. No retainage will be held by City from progress payments due Consultant, except as described in paragraph 4, Compensation. Any retainage held by Consultant from progress payments due its subconsultants shall be promptly paid in full to its subconsultants within 21 days after such subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject Consultant or its subconsultant to the penalties, sanctions and other remedies specified in section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to Consultant or its subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE subconsultants.
  - b. Any subcontract entered into by Consultant as a result of this Contract, regardless of amount, shall contain all of the provisions of this section.
4. DBE Records.
- a. Consultant shall maintain records of materials purchased and/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



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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 subcontractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- b. Upon completion of this 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 Subcontractors," CEM-2402F (Exhibit F-5), certified correct by Consultant or its authorized representative, and shall be furnished to the City's Public Works Director or his/her authorized representative with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 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 Enterprise (DBE), First-Tier Subcontractors" is submitted to the City's Public Works Director or his/her authorized representative.

#### 5. DBE Certification and Decertification Status

If Consultant, or a DBE subcontractor of Consultant, is decertified during the life of this Contract, Consultant shall notify the City's Public Works Director or his/her authorized representative in writing with the date of decertification. If Consultant or a subcontractor of Consultant becomes a certified DBE during the life of the Contract, Consultant shall notify the City's Public Works Director or his/her authorized representative in writing with the date of certification. Any changes should be reported to the City's Public Works Director or his/her authorized representative within 30 days.

#### F. Discrimination

1. 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.
2. 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.

3. 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.
4. 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.

#### G. Prevailing Wages

1. 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 applicable to the work. In the event that the federal wage rates differ from the state prevailing wage, the higher of the two must be paid, if applicable to the project.
2. 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 section G.
3. 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>.



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#### H. Debarment and Suspension Certification

1. 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 the City.
2. Exceptions will not necessarily result in denial of recommendation for award, but shall be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
3. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### I. Audit Review Procedures

1. 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 the City's Finance Director.
2. Not later than 30 days after issuance of the final audit report, Consultant may request a review by the City's Finance Director of unresolved audit issues. The request for review will be submitted in writing.
3. Neither the pendency of a dispute nor its consideration by the City will excuse Consultant from full and timely performance, in accordance with the terms of this Contract.
4. Consultant and subconsultant contracts, including fee 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, fee 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 local government



officials are allowed full access to the CPA's work papers including making copies as necessary. The Contract, fee proposal, and ICR shall be adjusted by Consultant and approved by the City's Public Works Director or his/her authorized representative 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 the City's Public Works Director or his/her authorized representative at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments 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.

#### J. Equipment Purchase

1. Prior authorization in writing, by the City's Public Works Director or his/her authorized representative 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.
2. For purchase of any item, service or consulting work not covered in the Task Order and exceeding \$5,000 prior authorization by the City's Public Works Director or his/her authorized representative; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
3. 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, the 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 the 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 the 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 the City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
4. All subcontracts in excess \$25,000 shall contain the above provisions.

#### K. Forms



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Consultant shall complete, execute, and submit to The City's Public Works Director or his/her authorized representative the following forms as required for execution and or performance under this Contract:

1. Forms/Documentation Required for Execution of Contract
  - a. Consultant Certification of Contract Costs and Financial Management System (Exhibit F-1)
  - b. Disclosure of Lobbying Activities (Exhibit F-2)
  - c. Local Agency Consultant Contract DBE Commitment (Exhibit F-3)
  - d. Local Agency Consultant Proposal DBE Commitment (Exhibit F-4)
  - e. DBE Information - Good Faith Efforts (Exhibit F-6)
  
2. Forms that May Be Requested by the City's Public Works Director or his/her authorized representative
  - a. Final Report – Utilization of DBEs (Exhibit F-5)
  - b. Indirect cost rate calculations and documentation (Exhibit F-7)
  - c. Copies of prior and current CPA indirect cost rate (ICR) audit reports and rate schedules, if any (Exhibit F-8)
  - d. DBE Status Change Certification (Exhibit F-10)
  - e. Consultant in Management Position Conflict of Interest and Confidentiality Statement (Exhibit F-11)
  - \* Other forms may be required by State and Federal Law or Funding Requirements and Consultant shall be required to fill out and sign those forms in a timely manner as requested.

## **9. INDEPENDENT CONTRACTOR**

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third party person(s) employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.



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F. Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract.

## **10. AUTHORITY OF CONSULTANT**

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

## **11. AMENDMENTS, CHANGES OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the Parties hereto and shall be signed by the persons authorized to bind the Parties.

## **12. TERMINATION**

A. The 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 (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 16, Property of City.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

D. In the event of termination, the City may proceed with the work in any manner deemed proper by the City. If the City terminates this Contract with Consultant, the City shall pay Consultant the sum due to Consultant under this Contract prior to termination, unless the cost of completion to the 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.

E. The maximum amount for which the City shall be liable if this Contract is terminated is the amount of actual services rendered as of the date of termination but in no event shall that amount exceed the full Contract amount.





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F. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 12.

G. Consultant does not have exclusive rights to the scope of work in this Contract. The City, in its sole discretion may solicit other consultants to perform any of the services provided in this Contract.

### **13. FUNDING**

Consultant agrees and understands that renewal of this Agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Agreement in subsequent years.

### **14. NOTICE TO PROCEED**

Prior to commencing work under this Agreement, Consultant shall receive a written "Notice to Proceed" from the City's Public Works Director. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed. Notices to proceed for individual Task Orders issued under this Contract shall be issue in accordance with Section 5 (Task Orders) of this Contract.

### **15. EXTENSIONS OF TIME**

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions must be authorized in advance by City, in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 11.

### **16. PROPERTY OF CITY**

A. It is mutually agreed that all materials prepared by Consultant under this Contract shall become the property of City, and Consultant shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and Consultant shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a Contract for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein,



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including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.

C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

## **17. COMPLIANCE WITH LAW**

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

## **18. REPRESENTATIONS**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City's Public Works Director or his/her authorized representative, is no longer employed by Consultant, or is replaced with the written approval of the City's Public Works Director or his/her authorized representative, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) calendar days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

## **19. APPROVAL OF STAFF MEMBERS**

A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify the City's Public Works Director or his/her authorized representative of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City's Public Works Director, or his/her authorized representative of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such



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performance. The list shall include staff member names, corresponding classification or job title, hourly billing rate, location, and qualifications...

B. Consultant shall at all times provide staff that maintains professional demeanor and attire in both public and private settings. Personnel who do not deliver satisfactory professional or customer service shall be removed by the Consultant immediately at the request of the City's Public Works Director, or his/her authorized representative, and immediately replaced, if necessary, with other qualified personnel in accordance with section 19 provision A.

C. Criminal History Background Checks: The Consultant shall coordinate with the City to ensure that all City-assigned staff shall complete a Criminal History Background check at the expense of the Consultant. The City shall make available to the contractor locations for fingerprinting by the City. Upon receipt of the reports, the City shall review the results and forward to the Consultant a list of all employees and whether they were a pass or fail. Anyone failing the criminal history background shall not be eligible to work under contract to the City.

## **20. ASSIGNMENT AND SUBCONTRACTING:**

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work other than as indicated in this Contract without the prior written approval of the Public Works Director or his or her authorized representative. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Nothing contained in this Contract or otherwise, shall create any contractual relation between the City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be fully responsible to the 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 the City's obligation to make payments to the Consultant.

C. 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 the City's Public Works Director or his/her authorized representative, except that, which is expressly identified in the Task Order.

D. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by the City.

E. Any subcontract in excess of \$25,000 entered into as a result of this Contract shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.



F. Any substitution of subconsultant(s) must be approved in writing by the City's Public Works Director or his/her authorized representative prior to the start of work by the subconsultant(s).

## **21. MATERIALS CONFIDENTIAL**

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

## **22. LIABILITY OF CONSULTANT—NEGLIGENCE**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

## **23. INDEMNITY AND LITIGATION COSTS**

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Contract on the part of Consultant, except such loss or damage which was caused by the sole negligence, or willful misconduct of the City. The provisions of this section shall survive termination or suspension of this Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in this Section applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

## **24. EVIDENCE OF INSURANCE COVERAGE**



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Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in **Exhibit D**, attached hereto and incorporated herein by reference. Furthermore, Consultant shall certify its compliance with Labor Code Section 3700 in the form attached hereto and incorporated by reference, as **Exhibit E**.

## **25. EVIDENCE OF INSURANCE COMPLIANCE**

Consultant or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor ("Processor") to accept and process Consultant's proof of insurance. Consultant shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

## **26. EMPLOYMENT PRACTICES**

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

## **27. UNAUTHORIZED ALIENS**

Consultant hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

## **28. LICENSES, PERMITS, AND OTHER APPROVALS**

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals legally required for Consultant to practice its profession and perform the work described herein. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

## **29. RECORDS AND INSPECTION**

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. 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 8546.7; Consultant, subconsultants, and the 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, the 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. Subcontracts in excess of \$25,000 shall contain this provision.

### **30. MISCELLANEOUS PROVISIONS**

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

B. Venue: This Contract shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Contract governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Contract shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Contract is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Contract shall remain binding.

D. Time: All times stated herein or in any other Contract Documents are of the essence.

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.



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H. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. Severability: The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Consultant that any such person or entity, other than the City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

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

N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Contract if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.



**31. ENTIRE AGREEMENT**


This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by the Parties as follows:

Approved to as form:

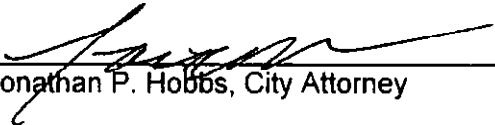
**CONSULTANT**

By: \_\_\_\_\_  
Attorney for Consultant

By:   
Daniel Chow, President/CEO

Approved to as form:

**CITY OF ELK GROVE**

By:   
Jonathan P. Hobbs, City Attorney

By: \_\_\_\_\_  
Laura S. Gill, City Manager

Attest to:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

Dated: \_\_\_\_\_





**EXHIBIT A**

**Scope of Work**

The primary scope of services for this Contract shall be to provide on-call project management services to the City's Capital Program Manager over State and Federal funded projects. There may be ancillary services required to support the other functions within the Public Works Department.

All work to be performed shall be executed via Task Orders. The Task Orders with Consultant listed in Table A1 pursuant to the previously executed contract number C-10-300 dated November 8, 2010, as amended shall be governed as of November 7, 2016 under the terms of this Contract as if they were executed after the Effective Date of this Contract.

Consultant may request that Task Orders listed in Table A1 be governed under the terms of this Contract prior to November 7, 2016. This request shall include a revised Table A1. The revised table shall only be used with the written approval of the City's Public Works Director or his/her authorized representative. Approved changes shall be documented through an amended Table A1 approved and attached to the Contract by the Publics Work Director or his/her authorized representative.

**Table A1**

Task Order Name	Date Task Order shall be Governed under the terms of this Contract
TO PT0121 - LAGUNA CREEK TRAIL - CAMDEN SOUTH SPUR	November 7, 2016
TO PT0137 - BRADSHAW/SHELDON RD INTERSECTION IMPROVEMENTS	November 7, 2016
TO PT034A - GRANT LINE WIDENING PHASE 1	November 7, 2016
TO WAC009 ELK GROVE-FLORIN ROAD AT WEST CAMDEN SIDEWALK INFILL	November 7, 2016
TO WAC011-CITYWIDE CURB RAMPS	November 7, 2016
TO WAC016 ELK-GROVE FLORIN ROAD SIDEWALK INFILL AT STRAWBERRY CREEK	November 7, 2016
TO WAC021 BIG HORN / LAGUNA BUS STOP AND SIDEWALK PROJECT	November 7, 2016
TO WAC024 ELK GROVE-FLORIN RD. AT W. CAMDEN DR. SIDEWALK INFILL, EAST SIDE	November 7, 2016
TO WAC026-ELK GROVE-FLORIN RD. AND ELK GROVE PARK SIDEWALK INFILL	November 7, 2016
TO WBR001 BPMP	November 7, 2016
TO WCY005 CORP YARD PARKING	November 7, 2016
TO WDR013 SLEEPY HOLLOW DETENTION BASIN RETROFIT PROJECT	November 7, 2016
TO WIW003 SWACC MAINTENANCE	November 7, 2016
TO WPR010 WATERMAN ROAD REHABILITATION AND BIKE LANES	November 7, 2016
TO WRM001 RURAL ROAD SHOULDER MAINTENANCE	November 7, 2016



TO WTC001 ITS PHASE 4	November 7, 2016
TO WTC005 FRANKLIN AND BRUCEVILLE SIGNAL COORDINATION	November 7, 2016
TO WTL005 LAGUNA CREEK LAGUNA CREEK TRAIL - CAMDEN NORTH SPUR	November 7, 2016
TO WTL022 LOWER LAGUNA OPEN SPACE PRESERVE TRAIL	November 7, 2016
TO WTL035 ELK GROVE AND WHITEHOUSE CREEK TRAIL REHABILITATION	November 7, 2016
TO WTR012 OLD TOWN STREETSCAPE PHASE 2	November 7, 2016
TO WTR015 - KAMMERER RD EXTENSION AND WIDENING	November 7, 2016

**1 Office Space, Equipment, and Staff**

**1.1 Office space lease**

Consultant shall be charged \$17,000 per year for each City furnished workspace including the minimum number of workspaces required to be used. The cost of lease includes office space, furniture, telephone, City furnished computer and normal/routine office materials. Consultant shall be responsible, at its cost, for performing any ergonomic assessments, and supplying any special equipment, including any equipment necessary to reasonably accommodate any of its staff members' needs and/or disabilities.

**1.2 Project Management Staff**

Unless prior direction and or approval is provided by City, a minimum of 2 Project Management staff provided by the Consultant working at or near full time shall reside in City furnished workspaces.

**2 Services**

**2.1 Services Supporting the Capital Program Manager**

The City's Department of Public Works, Capital Program Division is responsible for programming and delivery of the City's Capital Improvement Program. Ensuring timely delivery of quality projects as budgeted and the pursuit of other funding resources are critical activities in this Division.

The Consultant shall provide Project Management services over other consultants contracted directly with the City to deliver Federal and State funded projects. These services include project planning and scoping, grant management, managing the solicitation process for design and other technical consultants, and project advertisement and award. The following major activities are examples of those that shall be managed under this Contract by Consultant. Project Management Services for these activities shall include monitoring and reporting of the



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scope, schedule, budget, and quality of deliverables. It is also anticipated that the non-exclusive Consultant may be required to directly provide a minor amount of the below listed services.

- Civil Engineering Services
- Bridges and Structures Design Services
- Architecture Design Services
- Landscape Architecture Design Services
- Hydrology, Hydraulics, and Drainage Design Services
- Geotechnical Engineering and Materials Testing
- Traffic Engineering Services
- Utility Coordination and Design Services
- Survey and Right-of-Way Mapping Services
- Right-of-Way Engineering
- Right of Way Acquisition
- Environmental Documentation & Permitting Services
- Community Outreach
- Design Services During Construction

## **2.2 Services Supporting the Engineering Services Manager**

The City's Department of Public Works, Engineering Services Division has broad responsibilities for managing a diverse group of services, mostly engineering related. It is anticipated that for most State and Federally funded projects, the Construction Management (CM) work will be performed by separate On-call professional service contracts contracted directly by the City. The non-exclusive Consultant may be required to directly provide a minor amount of these services. In addition, Project Management services under this Contract may include coordination with these other CM consultants.

## **2.3 Services Supporting the Maintenance and Operations Manager**

The Consultant shall not generally be required to provide any known specific services for the City's Department of Public Works, Maintenance and Operations Division. Any services provided will be ancillary to the work otherwise performed under this Contract.

## **2.4 Other Services**

The City's Department of Public works also manages the Divisions of Transit and the Division of Integrated Waste. The services provided by these divisions are being furnished by existing service providers. However, there may be times when Engineering and Maintenance Support must be provided to these divisions and this type of ancillary support work may be a requirement of the Consultant under this Contract. Additionally other City Departments may need project management or related services due to State or Federally funded projects and these types of services may be a requirement of the Consultant under this Contract.



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**EXHIBIT B**

**Schedule of Performance**

Schedule of Performance shall be in accordance with each individual Task Order as issued.



**EXHIBIT C**

**HOURLY BILLING RATES**

Willdan Engineering On-Site Staff Billing Rate Schedule

<b>Willdan Elk Grove On-Site Staff Classification</b>	<b>Contract 1 Proposed On-Site Staff Billing Rate</b>
Architect III	\$139
Assistant Engineer I	\$72
Assistant Engineer II	\$90
Assistant Engineer III	\$95
Construction Manager	\$132
Designer III	\$90
Engineering Manager I	\$149
Project Controller I	\$83
Project Manager II	\$120
Public Works Technician II	\$75
Sr. Public Works Observer V	\$115
Sr. Designer II	\$95
Sr. Engineer II	\$125
Sr. Engineer IV	\$139
Sr. Engineer V	\$144
Student/Intern	\$32
Traffic Engineer III	\$139

Consultant may request the hourly billing rates to be annually adjusted on July 1 of each year. Increases in Consultant staff billing rates shall not exceed the Employment Cost Index for total compensation for civilian workers in the "Professional and related" occupational group as published by the U.S Department of Labor Bureau of Labor Statistics. This request shall include staff member names and corresponding classification or job title and hourly billing rates. Revised Consultant hourly billing rates shall only be used with the written approval of the City's Public Works Director or his/her authorized representative. Approved adjustments to hourly billing rates shall be documented through an amended Exhibit C approved and attached to the Contract by the Publics Work Director or his/her authorized representative.



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## EXHIBIT D

### Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

- I. General Liability:
  - a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
  - b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
  - c. Claims-made coverage is not acceptable.
  - d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
  - e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the Contract.
  - f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the Contract.
  - g. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
2. Automobile Liability:
  - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of hired, and non-owned automobiles.
  - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8 and 9 (hired, and non-owned).
  - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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  - d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
3. Worker's Compensation
  - a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of



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- California), and Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
- b. Employer's Liability Coverage shall not be less than the statutory requirements.
  - c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
4. **Errors and Omissions; Malpractice; Professional Liability.** Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$5,000,000 per claim and annual aggregate. Consultant shall provide Retroactive Date for claims-made policies. Upon termination of this agreement, the same insurance requirements in Section 4 of this Exhibit will apply for a five (5) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.
5. **Excess Liability.** Excess liability with limits of not less than \$4,000,000 per claim and aggregate.
6. **Other Insurance Provisions:** The general liability, automobile liability, and excess liability coverages shall contain the following provisions and endorsements:
- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the Risk Manager.
  - b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
  - c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
  - d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's



requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.

7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests'** rating of **no less than A:VII**.
8. If Consultant maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.
9. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
10. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
11. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the Contract by giving 30 days written notice.
12. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
13. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the Contract.
14. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the Contract.
15. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
16. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.





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17. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

City of Elk Grove  
Willdan Engineering  
Re: Federal/State funded public works services



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**EXHIBIT E**

**Certificate of Compliance With Labor Code § 3700**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this Contract. (Cal. Labor Code §§1860, 1861.)

CONSULTANT

  
\_\_\_\_\_  
Consultant, Title

*PRESIDENT/CEO*



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## EXHIBIT F

### Required Forms

The forms and conditions contained in this Exhibit F are hereby incorporated into this Contract by reference. Consultant shall review, complete, execute, and submit to City the following forms as applicable for the execution of and or performance under this Contract:

1. Forms/Documentation Required for Execution of Contract
  - a. Consultant Certification of Contract Costs and Financial Management System (Exhibit F-1)
  - b. Disclosure of Lobbying Activities (Exhibit F-2)
  - c. Local Agency Consultant Contract DBE Commitment (Exhibit F-3)
  - d. Local Agency Consultant Proposal DBE Commitment (Exhibit F-4)
  - e. DBE Information - Good Faith Efforts (Exhibit F-6) (if necessary)
  
2. Forms that May Be Requested by the City's Public Works Director or his/her authorized representative
  - a. Final Report – Utilization of DBEs (Exhibit F-5)
  - b. Indirect cost rate calculations and documentation (Exhibit F-7)
  - c. Copies of prior and current CPA indirect cost rate (ICR) audit reports and rate schedules, if any (Exhibit F-8)
  - d. DBE Certification Status Change (Exhibit F-10)  
Consultant in Management Position Conflict of Interest and Confidentiality Statement (Exhibit F-11)
  - \* Other forms may be required by State and Federal Law or Funding Requirements and Consultant shall be required to fill out and sign those forms in a timely manner as requested.

CITY OF ELK GROVE



CONSULTANT CONTRACT FOR  
WILLDAN ENGINEERING

**Non-Federal/State Funded Public Works Services**



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## CONTRACT FOR SERVICES

THIS CONTRACT is made on \_\_\_\_\_, 2016, by and between the City of Elk Grove, a municipal corporation (the "City") and Willdan Engineering (the "Consultant"), collectively referred to as the "Parties."

### WITNESSETH

WHEREAS, the Consultant has presented a proposal to provide public works services, which services are identified in the Scope of Work attached hereto and incorporated herein as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, the City desires to hire Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

### 1. SCOPE OF SERVICES

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the Scope of Work, attached hereto and incorporated herein by reference. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any exhibits shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. The terms and conditions of this Contract shall control all Task Orders ("Task Orders")

B. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

### 2. TERM OF CONTRACT

A. This Contract shall go into effect on, May 1, 2016 ("Effective Date") and shall continue for a period of three years and shall supersede the previous contract number C-10-300 for all new tasks orders issued. The Contract may be extended by mutual agreement of the Parties for up to an additional 2 years, unless terminated pursuant to Section 11 of this Contract. Task Orders previously covered



under contract number C-10-300 shall be transferred to this Contract as described in the Scope of Work as if they had been initiated by this Contract by mutual agreement of the Parties.

B. The period of performance for each specific task shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Contract, the terms of the Contract may be extended by Contract amendment.

### **3. SCHEDULE FOR PERFORMANCE**

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the "Schedule of Performance") assigned to a project on a project by project basis as identified in executed Task Orders. Deviations from the time schedule stated in the Schedule of Performance of each Task Order may be made with the written approval of the City's Public Works Director, or his/her authorized representative. Consultant's failure to complete work in accordance with the Schedule of Performance designated in the Task Order may result in delayed compensation as described in Section 4.

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions must be authorized in advance by the City's Public Works Director or his/her authorized representative in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated into the specific Task Orders as written amendments to the Task Order.

### **4. COMPENSATION**

- A. City shall pay Consultant on a time and expense basis as described in the Scope of Work and the Not to exceed amount set forth in each individual Task Order in accordance with the rate schedule set forth in **Exhibit B**, "Compensation and Method of Payment," attached hereto and incorporated herein by reference, for the actual fees, costs and expenses for the time and materials required and expended, and approved by the City, but in no event shall total compensation under this Contract exceed \$14,000,000 annually and no cents (\$00.00), without City's the Public Work's Director's prior written approval provided that such additional approvals by the Public Works Director do not exceed budgeted amounts. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly billing rate. In no event shall Consultant be entitled to compensation for work not included in each Task Order's Scope of Work unless a written Task Order Amendment describing the extra work and payment terms has been executed by the City's Public Works Director.

B. If Consultant's performance is not in conformity with the Scope of Work or Schedule of Performance, payments may be delayed or denied, unless otherwise agreed to by the City in writing.



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C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 11.

**5. NOTICES**

A. Consultant shall transmit invoices and any notices, required by this Contract, to the City's Public Works Director, or his/her authorized representative as follows:

City of Elk Grove  
Attn: Finance Department  
8401 Laguna Palms Way  
Elk Grove, California 95758

B. City shall transmit payments on invoiced amounts, and any notices required by this Contract to Consultant as follows:

Daniel Chow, President/CEO  
Willdan Engineering  
2401 E. Katella Ave., Suite 300  
Anaheim, CA 92806-6073  
(657)223-8520

**6. PROFESSIONAL SERVICES**

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any information, confidential or otherwise, relative to the work of City or the operations or procedures of City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to the City whether perceived or actual.

**7. INDEPENDENT CONTRACTOR**

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.



C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third party person(s) employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract.

## **8. AUTHORITY OF CONSULTANT**

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

## **9. CONFLICT OF INTEREST**

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

## **10. AMENDMENTS, CHANGES OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the Parties hereto and shall be signed by the persons authorized to bind the Parties.

## **11. TERMINATION**

A. This Contract may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 14, Property of City.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of





temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

D. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 11C. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 14, Property of City.

E. Consultant does not have exclusive rights to the scope of work in this Contract. The City, in its sole discretion may solicit other consultants to perform any of the services provided in this Contract.

## **12. FUNDING**

Consultant agrees and understands that renewal of this Agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Agreement in subsequent years.

## **13. NOTICE TO PROCEED**

Prior to commencing work under this Agreement, Consultant shall receive a written "Notice to Proceed" from City's Public Works Director, or his/her authorized representative. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed. An executed Task Order shall serve as notice to proceed with the scope of services under each Task Order.

## **14. PROPERTY OF CITY**

A. It is mutually agreed that all materials prepared by Consultant under this Contract shall become the property of City, and Consultant shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and Consultant shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from



work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.

C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

#### **15. COMPLIANCE WITH LAW**

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

#### **16. REPRESENTATIONS**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City's Public Works Director, or his/her authorized representative, is no longer employed by Consultant, or is replaced with the written approval of the City's Public Works Director, or his/her authorized representative, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) calendar days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

#### **17. APPROVAL OF STAFF MEMBERS**



A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City's Public Works Director or his/her authorized representative of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance. The list shall include staff member names, corresponding classification or job title, hourly billing rate, location, and qualifications.

B. Consultant shall at all times provide staff that maintains professional demeanor and attire in both public and private settings. Personnel who do not deliver satisfactory professional or customer service shall be removed by the Consultant immediately at the request of the City's Public Works Director, or his/her authorized representative, and immediately replaced, if necessary, with other qualified personnel in accordance with section 17 provision A.

C. Criminal History Background Checks: The Consultant shall coordinate with the City to ensure that all City-assigned staff shall complete a criminal history background check at the expense of the Consultant. The City shall make available to the Consultant locations for fingerprinting by the City. Upon receipt of the reports, the City shall review the results and forward to the Consultant a list of all employees and whether they were a pass or fail. Anyone failing the criminal history background check shall not be eligible to work under Contract to the City.

**18. ASSIGNMENT AND SUBCONTRACTING:**

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the City. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Nothing contained in this Contract or otherwise, shall create any contractual relationship between the City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be fully responsible to the 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 the City's obligation to make payments to the Consultant.

C. Any substitution of subconsultant(s) or contractor(s) must be approved in writing by the City's Public Works Director or his/her authorized representative prior to the start of work by the subconsultant(s).



D. Consultant shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Consultant.

**19. MATERIALS CONFIDENTIAL**

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

**20. LIABILITY OF CONSULTANT—NEGLIGENCE**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

**21. INDEMNITY AND LITIGATION COSTS**

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Contract on the part of Consultant, except such loss or damage which was caused by the sole negligence, or willful misconduct of the City. The provisions of this section shall survive termination or suspension of this Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in this Section applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as



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required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

#### Design Professionals

When Consultant provides services as a design professional, Consultant shall indemnify and defend and be strictly liable for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. "Design professionals" include licensed architects, landscape architects, professional land surveyors, and registered professional engineers but only to the extent he or she is engaging in design professional work. In order to be engaging in design professional work he or she must be exercising independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering, architecture, or land surveying work or the direct engineering, architecture, or land surveying control of such projects. All design professionals shall prepare design documents free from defects. Any defects in design shall be considered a breach of contract.

#### **22. EVIDENCE OF INSURANCE COVERAGE**

Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in Exhibit C, attached hereto and incorporated herein by reference.

Furthermore, Consultant shall certify its compliance with Labor Code Section 3700 in the form attached hereto and incorporated by reference, as Exhibit E.

#### **23. EVIDENCE OF INSURANCE COMPLIANCE**

Consultant or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor ("Processor") to accept and process Consultant's proof of insurance. Consultant shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

#### **24. EMPLOYMENT PRACTICES**

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

#### **25. UNAUTHORIZED ALIENS**



Consultant hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

## **26. LICENSES, PERMITS, AND OTHER APPROVALS**

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession and perform the work described herein. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

## **27. RECORDS AND INSPECTION**

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

## **28. MISCELLANEOUS PROVISIONS**

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

B. Venue: This Contract shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Contract governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Contract shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Contract is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Contract shall remain binding.

D. Time: All times stated herein or in any other Contract Documents are of the essence.



E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. Severability: The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Consultant that any such person or entity, other than the City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

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



N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Contract if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

**29. ENTIRE AGREEMENT**

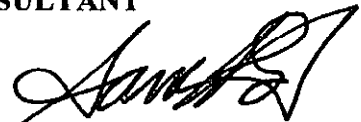
This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by the Parties as follows:

Approved to as form:

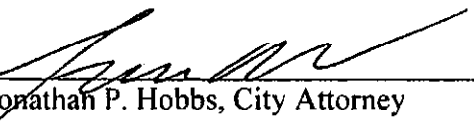
**CONSULTANT**

By: \_\_\_\_\_  
Attorney for Consultant

By:   
Daniel Chow, President/CEO

Approved to as form:

**CITY OF ELK GROVE**

By:   
Jonathan P. Hobbs, City Attorney

By: \_\_\_\_\_  
Laura S. Gill, City Manager

Attest to:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

Dated: \_\_\_\_\_





**EXHIBIT A**

**Scope of Services**

Consultant shall provide certain professional and general services required to operate the Public Works Department and provide a high level of customer service to the residents, businesses and others doing business with the City. Services provided by Consultant shall be on an on-call basis as requested by the City in writing over the term of the Contract. Consultant shall provide qualified personnel, contractors and sub-consultants, in accordance with an approved Staffing Plan, to provide all professional and general services under the responsibility of the Public Works Department including, but not limited to, the following areas: Engineering Services, Capital Improvement Program and Maintenance and Operations/General Services. It is understood by all parties that the Staffing Plan is subject to change periodically, as may be required, to meet the fluctuations in workload.

All work to be performed shall be executed via Task Orders. The Task Orders with Consultant listed in Table A1 pursuant to the previously executed contract number C-10-300 dated November 8, 2010, as amended shall be governed as of November 7, 2016 under the terms of this Contract as if they were executed after the Effective Date of this Contract.

Consultant may request that Task Orders listed in Table A1 be governed under the terms of this Contract prior to November 7, 2016. This request shall include a revised Table A1. The revised table shall only be used with the written approval of the City's Public Works Director or his/her authorized representative. Approved changes shall be documented through an amended Table A1 approved and attached to the Contract by the Publics Work Director or his/her authorized representative.

**Table A1**

<b>Task Order Name</b>	<b>Date Task Order shall be Governed under the terms of this Contract</b>
TO OM0005-2016 – ENCROACHMENT, TRANSPORTATION, STREET USE PERMIT	November 7, 2016
TO PT0010 SHELDON ROAD/STATE ROUTE 99 INTERCHANGE RECONSTRUCTION PROJECT	November 7, 2016
TO PT0124 - GILLIAM DRIVE TRAIL CONNECTOR	November 7, 2016
TO PT0134 - BOND RD/BADER RD INTERSECTION SIGNALIZATION	November 7, 2016
TO PT0138 - SHELDON RD/WATERMAN RD INTERSECTION IMPROVEMENTS	November 7, 2016
TO TM0001 – 2016 BUS SHELTER/BUST STOP MAINTENANCE	November 7, 2016
TO WAC027 2016 BUS STOP ACCESSIBILITY IMPROVEMENTS	November 7, 2016
TO WCC002 CIVIC CENTER AQUATICS CENTER	November 7, 2016
TO WCC010 CIVIC CENTER - SENIOR CENTER + PARKING	November 7, 2016
TO WCC011 CIVIC CENTER - VETERAN'S HALL + PARKING	November 7, 2016
TO WCCA01 CIVIC CENTER - PLANNING	November 7, 2016
TO WCE004 HORSESHOE PARK	November 7, 2016
TO WCE006 WAYFINDING SIGNAGE	November 7, 2016
TO WDMA01 -2016 DRAINAGE ENGINEERING OPERATIONS	November 7, 2016



TO WDMA02-2016 DRAINAGE MAINTENANCE OPERATIONS	November 7, 2016
TO WDMA06 – 2016 DRAINAGE MAINTENANCE	November 7, 2016
TO WDMA07 – 2016 CITY WIDE STREET SWEEPING	November 7, 2016
TO WDR016 SCADA IMPROVEMENTS/ SDPS MAINTENANCE AND REPAIR	November 7, 2016
TO WDR017 - STRAWBERRY CREEK DETENTION BASIN RETROFIT PROJECT	November 7, 2016
TO WDR021 ELK GROVE CREEK MULTI-FUNCTIONAL CREEK IMPROVEMENTS	November 7, 2016
TO WDR022 BOND RD STORM DRAIN IMPROVEMENTS	November 7, 2016
TO WDR023 NORTH CAMDEN DRIVE STORM DRAIN IMPROVEMENTS	November 7, 2016
TO WDR024 EMERALD VISTA DRIVE STORM DRAIN IMPROVEMENTS	November 7, 2016
TO WDR036 SEPA SHED C CHANNEL IMPROVEMENTS	November 7, 2016
TO WDR037 SEPA DRAINAGE RIGHT OF WAY ACQUISITION	November 7, 2016
TO WDR038 BLAKEMORE COURT AND HARTWELL COURT DRAINAGE IMPROVEMENTS	November 7, 2016
TO WDR039 200-YEAR FLOODPLAIN MASTER DRAINAGE MAPPING	November 7, 2016
TO WDRA01 – 2016 DRAINAGE INVESTIGATIONS	November 7, 2016
TO WFC004 ELK GROVE MULTI-SPORT PARK COMPLEX	November 7, 2016
TO WFC006 MULTI-MODAL STATION	November 7, 2016
TO WFC009 SERVICE CENTER BALLISTIC PANEL INSTALL AND ENTRANCE DOOR REPLACEMENT	November 7, 2016
TO WFC010 OFFICE CONSTRUCTION	November 7, 2016
TO WFC011-CITY FACILITIES WATER CONSERVATION RESTROOM UPGRADES	November 7, 2016
TO WFC012-ELK GROVE ANIMAL SHELTER	November 7, 2016
TO WFC014-SPORTS STADIUM STUDY	November 7, 2016
TO WFC015 - FIBER OPTIC CABLE INSTALLATION - BOND ROAD	November 7, 2016
TO WFA01 - FACILITIES ADMINISTRATION	November 7, 2016
TO WFL001 WHITELOCK PKWY - SHED B CHANNEL TREE PLANTING	November 7, 2016
TO WFL003 SCWA FRANKLIN ROAD FRONTAGE	November 7, 2016
TO WFL004 EAST FRANKLIN AREA CORRIDOR LANDSCAPING	November 7, 2016
TO WFL005 FRANKLIN HIGH/MACHADO RANCH RD SEWER CORRIDOR	November 7, 2016
TO WFL007 DRAINAGE SHED'S A CHANNEL LANDSCAPING ENHANCEMENT	November 7, 2016
TO WFL010 BRUCEVILLE RD FRONTAGE AT QUAIL RUN	November 7, 2016
TO WFL013 FRANKLIN CREEK PEDESTRIAN BRIDGE LIGHTING	November 7, 2016
TO WFM009 CITY FACILITIES FLOORING REPLACEMENT	November 7, 2016
TO WILLDAN 2014-001 SEPA DRAINAGE INFRASTRUCTURE PLANNING FOR DRAINAGE FEE NEXUS STUDY	November 7, 2016
TO WIW001 SWACC UNLOADING AREA IMPROVEMENTS	November 7, 2016
TO WMI002 SOUTHEAST POLICY AREA	November 7, 2016
TO WMI005 SEPA SEWER LIFT STATION AND INFRASTRUCTURE	November 7, 2016
TO WOM001-COMMUNITY EVENTS	November 7, 2016



TO WPR007 UNION PARK PAVEMENT AND DRAINAGE REHABILITATION	November 7, 2016
TO WPR015-SLURRY SEAL PROJECT FY16	November 7, 2016
TO WPR016 2016 OVERLAY PROJECT FY16	November 7, 2016
TO WPRA01- 2016 PAVEMENT REHABILITATION PROGRAMMING	November 7, 2016
TO WRMA01-2016 PUBLIC INFRASTRUCTURE OPERATIONS	November 7, 2016
TO WRMA02 – 2016 DRAINAGE MAINTENANCE OPERATIONS	November 7, 2016
TO WRMA03 – 2016 – TRAFFIC SIGNAL & LIGHTING MAINTENANCE	November 7, 2016
TO WRMA04 – 2016 – PUBLIC INFRASTRUCTURE MAINTENANCE	November 7, 2016
TO WRMA05-2016 -- PAVEMENT MANAGEMENT	November 7, 2016
TO WSC005 - SPEED CONTROL PHASE 5	November 7, 2016
TO WSCA01-SPEED CONTROL PROGRAM ANALYSIS AND MANAGEMENT	November 7, 2016
TO WSL005 LED STREETLIGHT REPLACEMENT PHASE 2: DECORATIVE LUMINAIRES	November 7, 2016
TO WTC007 WHITELOCK PARKWAY/BARTHOLOMEW PARK EAST DRIVEWAY LEFT TURN POCKET	November 7, 2016
TO WTC008 WHITELOCK PARKWAY/FRANKLIN HIGH PARK IMPROVEMENTS	November 7, 2016
TO WTC013-LEFT TURN POCKET EXTENSION EB LAGUNA BLVD AT FRANKLIN BLVD	November 7, 2016
TO WTCA01 TRAFFIC ENGINEERING ADMINISTRATION	November 7, 2016
TO WTEA02 TRANSIT ROUTE PLANNING ASSISTANCE	November 7, 2016
TO WTEA05-TRANSIT ROUTE PLANNING ASSISTANCE	November 7, 2016
TO WTEA06-FED TRANSIT ADMINISTRATIVE STAFF SUPPORT	November 7, 2016
TO WTEA07 ON-CALL ENGINEERING SUPPORT TRANSIT	November 7, 2016
TO WTP004 CONSTRUCTION STANDARD PLAN AND SPECIFICATION UPDATE	November 7, 2016
TO WTPA01 -2016 ROADWAY FEE PROGRAM & CFD ADMINISTRATION	November 7, 2016
TO WTPA02 PUBLIC WORKS OPERATIONS	November 7, 2016
TO WTPA03-2016 FY 2015/2016 GRANT APPLICATION DEVELOPMENT AND PREPARATION	November 7, 2016
TO WTR002 GRANT LINE ROAD WIDENING PHASE 2	November 7, 2016
TO WTR008 UPRR QUIET ZONE AT DWIGHT RD AND SIMS RD	November 7, 2016
TO WTR009 WHITELOCK PKWY/STATE ROUTE 99 INTERCHANGE PROJECT	November 7, 2016
TO WTR011 BRUCEVILLE RD & POPPY RIDGE ROAD/QUAIL RUN LANE INTERSECTION SIGNAL	November 7, 2016
TO WTR027 SEPA ROADWAY ROW ACQUISITION	November 7, 2016
TO WTR028-GRANT LINE / SHELDON AREA FEASIBILITY STUDY	November 7, 2016
TO WTRA02-2016 CIP ADMINISTRATION AND FISCAL MANAGEMENT	November 7, 2016
TO WTRA04 INTERCHANGE ROW TRANSFER	November 7, 2016



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## 1 Office Space, Staff, & Equipment

### 1.1 Office space lease

Consultant shall be charged \$17,000 per year for each City-furnished workspace. The cost of the lease includes office space, furniture, a telephone, a City-furnished computer, normal business equipment and normal office consumables. Normal business equipment includes printers, copiers, fax machines, office telephones (not cell phones) and other devices and all software and appurtenances, as may be needed to perform the required services under this contract. Equipment shall be replaced on no more often than a three-year cycle and software shall be updated annually. Computers shall be configured to allow employees to access and respond to their Consultant e-mail account and electronic time card. Normal office consumables include, but are not limited to, copy paper, pencils, pens, staples and staplers, hole punches, print cartridges, and other normal engineering office supplies. Consultant shall be responsible for responding to any ergonomic and/or disability accommodation needs of its employees, including, but not limited to, assessing needs and purchasing necessary furnishings and equipment. This applies to workspaces at all City facilities.

### 1.2 City Hall Staff

Unless prior direction and/or approval is provided by City, the Consultant shall provide a minimum of ten (10) full-time staff (full-time employees, or FTEs), to be located at the main Public Works office currently located at 8401 Laguna Palms Way.

### 1.3 Maintenance & Operations Offices/Yard Staff

The City Corporation Yard offers yard/storage space for equipment and materials necessary for the performance of maintenance tasks. Unless prior direction and/or approval is provided by City, the Consultant shall provide a minimum of ten (10) full-time staff (FTEs), to be located at the City Corporation Yard office space currently located at 10250 Iron Rock Way. There will be no charge for Consultant or subcontractor equipment or supplies stored within the yard area; however, the space available is limited to the space designated by the City.

### 1.4 Administrative/Clerical/Specialized Support Staff

In addition to the positions listed above, five (5) full-time administrative/clerical support staff (FTEs) shall be furnished to support 32 Consultant professional staff, unless prior direction and/or approval is provided by the City's Public Works Director or his/her authorized representative. The City can request the Consultant to provide one additional administrative staff (FTE) for every ten (10) additional professional staff (FTEs). In addition to the general clerical work, the administrative staff shall support the scanning of current and existing Department documents for digital archiving and records retention purposes. All administrative staff shall be furnished at no direct cost to the City. Office space lease fees shall apply to all support staff utilizing workspaces at any City facility.

### 1.5 Staff Training

On an as needed basis, Willdan shall pay for reasonable tuition/fee associated with any approved training classes for Willdan staff in Elk Grove and the City will allow dedicated staff to not be present if assigned to City facilities during normal business hours and shall pay for the labor hours to attend these classes. Willdan staff shall consult with the City's Public Works Director or his/her authorized representative to review and approve requests of training from staff. On August 1 of each Contract year, Willdan will submit to the City an annual report providing a list



of attendees and the trainings classes attended by the Willdan Elk Grove staff for the previous City fiscal year.

#### **1.6 Staff not working in City Facilities**

In order to provide quick, efficient, and cost effective responses to meet City needs, Consultant staff that are largely dedicated to supporting the City and not stationed in City facilities shall occupy Consultant's workspaces within the corporate City limits of the City of Elk Grove, unless otherwise approved. The City shall not be responsible for procuring other office space should it be needed to accommodate additional staff.

#### **1.7 Equipment and Vehicles**

Consultant shall provide its personnel with the appropriate vehicles, and other normal and customary equipment, as needed to provide the requested services at no additional cost to the City. City shall not provide such equipment, Consultant will determine necessary equipment and vehicles in order to provide and maintain the levels of service outlined in this Contract.

## **2 Services**

Consultant shall perform a task in any one, or a combination of, services within the Consultants area of expertise as listed below and as requested by the City in a written Task Order signed by the City's Public Works Director. Request for services shall be made by City on a project-by-project basis under a Task Order approved by the City's Public Works Director specifying a detailed scope of work, schedules, and performance measurements. All Task Orders shall be prepared based on the approved schedule of fees of this Contract and in accordance with each Task Order. On an as needed basis, Consultant shall provide the following on-call services.

### **2.1 Capital Program Division Services**

The City's Department of Public Works, Capital Program Division is responsible for programming and delivery of the City's Capital Improvement Program. Ensuring timely delivery of quality projects as budgeted and the pursuit of other funding resources are critical activities in this Division.

The following are major activities that are performed by this Division and are to be supported by the Consultant:

- Project management and oversight of civil engineering projects
- Project planning and scoping
- Participation in regional planning efforts
- Project advertisement and award
- Records management
- Grant management
- Civil Engineering Services
- Bridges and Structures Design Services
- Architecture Design Services
- Landscape Architecture Design Services
- Hydrology, Hydraulics, and Drainage Design Services



- Geotechnical Engineering and Materials Testing
- Traffic Engineering Services
- Utility Coordination and Design Services
- Survey and Right-of-Way Mapping Services
- Right-of-Way Engineering
- Right-of-Way Acquisition
- Environmental Documentation & Permitting Services
- Community Outreach
- Design Services During Construction
- As-needed engineering or other support services

## **2.2 Engineering Services Division Services**

The City's Department of Public Works, Engineering Services Division has broad responsibilities for managing a diverse group of services, mostly engineering related, including coordination with the Development Services Department on Land Development applications.

The following are major activities that are performed by this Division and are to be supported by the Consultant:

- General Public Works administrative services
- Pavement management services
- Drainage engineering and Storm Water Management Program
- Construction management of capital projects
- Encroachment permit processing
- Transportation permit processing
- Traffic engineering and the traffic management center
- Surveying
- General Plan support
- Records management
- As-needed engineering or other support services

## **2.3 Maintenance and Operations Division Services**

The City's Department of Public Works, Maintenance and Operations Division is responsible for all the ongoing of the City's Road and Drainage Infrastructure. The tasks performed by this Division includes a variety of professional services to manage the programmatic aspects of the City's infrastructure, as well as General Services to manage the labor and material tasks necessary to implement maintenance repairs.

The following are major professional service activities that are performed by this Division and are to be supported by the Consultant:

- Long-term maintenance planning
- Customer-complaint tracking and follow-thru



- Quality control and quality assurance over the Maintenance and Operations activities
- Subcontract letting and awarding for general services
- Asset management inventory control
- Maintenance management

The following major general service activities are performed by this Division and are to be supported by the Consultant (it is important to note that many of these services require the Contractor to possess an appropriate General Contractor's License to perform the required work).

#### **Street Maintenance Efforts**

- Pavement and roadside repairs and maintenance
- Street sweeping
- Traffic signal maintenance
- Traffic sign maintenance
- Pavement markings maintenance
- Graffiti abatement
- Street light maintenance services
- Bridge maintenance
- Sidewalk, curb and gutter maintenance
- 24/7 emergency response
- Traffic control support to emergencies and community events
- Oversight of landscape maintenance services
- Storm Water Pollution Prevention Plan (SWPPP) oversight for maintenance tasks
- Other services, as required

#### **Drainage Maintenance Efforts**

- Maintenance of above-ground drainage facilities (creeks, channels, detention basins, etc.)
- Maintenance of underground drainage facilities (vaults, pipe lines, manholes, drain inlets, outfalls, flap gates, trash racks, etc.)
- Flood control pump station maintenance and permit compliance
- Maintenance and deployment of portable flood control equipment (pumps)
- Oversight to beaver management program
- Flood control preparation/planning
- Stormwater Pollution Prevention Plan oversight of drainage maintenance activities
- 24/7 emergency response
- Other services, as required

#### **2.4 Other Services**

The City's Department of Public Works also manages the Divisions of Transit and the Division of Integrated Waste. The services provided by these divisions are largely being furnished by existing service providers. However, there may be times when services must be provided to these divisions and this type of ancillary support work may be a requirement of the Consultant under this Contract. Additionally other City Departments may need related services and these types of services may be a requirement of the Consultant under this Contract.



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### **3. QUALITY CONTROL AND MANAGING CONFLICTS IN RESPONSIBILITY**

All work provided by the Consultant shall be cost effective, beneficial and of high quality. Consultant shall ensure that work activities performed shall be cost effective, provide great value to the City, within budget, and shall meet measurable performance objectives.

Consultant shall implement budget controls to ensure compliance with these requirements.





## **EXHIBIT B**

### **Compensation and Method of Payment**

1. Consultant shall submit monthly invoices to the City for work completed to date. Monthly invoices shall be submitted within 30 calendar days of the last day of the month being invoiced. All correct, complete and undisputed invoices sent by Consultant shall be paid by City within 30 calendar days of receipt.
  - a. For personnel designated in the approved Staffing Plan, hourly rates for each employee shall not exceed those shown in Table B1. All other employees shall be invoiced at the rates not to exceed those shown in Table B2.
    - i. For Fair Labor Standards Act (FSLA) non-exempt employees, any time worked beyond 8 hours in a day or exceeding 40 hours in a week shall be billed at 1.5 their normal billing rate. For FSLA exempt employees any time exceeding 40 hours in a week shall be paid as straight time.
    - ii. Hourly rates are all-inclusive and include, but are not limited to, all Consultant profit and overhead, including non-billable administrative staff.
    - iii. Hourly rates include normal and customary equipment for that position. (Examples include, but are not limited to: Boots, vests, hardhats, measuring tapes, vehicles, etc for field positions. Survey equipment for Surveyors. Testing equipment for material testing.)
    - iv. Mileage reimbursement for vehicle usage that is not considered normal and customary to the position will be charged at the current Federal guideline rate at the time of billing and shall only be reimbursed if the Consultant receives prior authorization from the City.
    - v. Travel costs outside of the SACOG region will be reimbursed in accordance with the City's travel reimbursement policy and shall only be reimbursed if the Consultant receives prior authorization from the City.
    - vi. Equipment costs that are not considered normal and customary will be reimbursed only if the Consultant receives prior authorization from the City.
  - b. Consultant may request the hourly billing rates to be annually adjusted on July 1 of each year. This request shall include staff member names and corresponding classification or job title and hourly billing rates. Revised Consultant hourly billing rates will only be used with the written approval of the City's Public Works Director. Approved adjustments to hourly billing rates shall be documented through an amended Table B1 and B2 approved and attached to the Contract by the Public Works Director.



2. Invoices from Consultant, sub consultants and vendors shall be paid on a time and material basis or as a percentage of lump sum/completed deliverables as specified in the associated Task Order. Personnel rates shall be at the sub consultant's or vendor's published billing rates as approved by the Director of Public Works or his/her authorized representative.
  
3. Consultant shall be allowed to add a 1.75 % markup on all sub-consultant and vendor invoices.



**Table B1**

<b>Willdan Engineering Proposed Labor Classification</b>	<b>On-Site Staff Billing Rates for FY 2015-2016</b>
Administrative Assistant I	\$0/\$57
Administrative Assistant II	\$0/\$63
Administrative Supervisor I	\$0/\$69
Administrative Supervisor II	\$0/\$85
Architect I	\$103
Architect II	\$120
Architect III	\$139
Assistant Construction Manager	\$120
Assistant Engineer I	\$74
Assistant Engineer II	\$90
Assistant Engineer III	\$95
Assistant Engineer IV	\$99
Associate Engineer I	\$106
Associate Engineer II	\$110
Associate Engineer III	\$112
City Engineer I	\$151
City Engineer II	\$178
City Surveyor I	\$139
Construction Manager	\$132
Designer I	\$65
Designer II	\$78
Designer III	\$90
Engineering Manager I	\$149
Program Analyst I	\$93
Project Controller I	\$83
Project Controller II	\$89
Project Manager I	\$107
Project Manager II	\$120
Project Manager III	\$125
Public Works Observer I	\$67



<b>Willdan Engineering Proposed Labor Classification</b>	<b>On-Site Staff Billing Rates for FY 2015-2016</b>
Public Works Observer II	\$75
Public Works Technician I	\$67
Public Works Technician II	\$75
Public Works Technician III	\$81
Public Works Technician IV	\$90
Sr. Construction Manager	\$146
Sr. Designer I	\$92
Sr. Designer II	\$95
Sr. Designer III	\$100
Sr. Designer IV	\$106
Sr. Engineer I	\$120
Sr. Engineer II	\$125
Sr. Engineer III	\$132
Sr. Engineer IV	\$139
Sr. Engineer V	\$144
Sr. Project Manager	\$132
Sr. Public Works Observer I	\$78
Sr. Public Works Observer II	\$90
Sr. Public Works Observer III	\$99
Sr. Public Works Observer IV	\$105
Sr. Public Works Observer V	\$115
Student/Intern	\$32
Survey Analyst I	\$90
Survey Analyst II	\$96
Survey Analyst III	\$101
Traffic Engineer I	\$110
Traffic Engineer II	\$129
Traffic Engineer III	\$139



**Table B2**

<b>Willdan Engineering Proposed Labor Classification</b>	<b>Off-Site Staff Billing Rates for FY 2015-2016*</b>
<b>ENGINEERING</b>	
Technical Aide	\$80
Drafter I	\$92
Drafter II	\$102
Senior Drafter	\$111
GIS Analyst I	\$124
GIS Analyst II	\$140
GIS Analyst III	\$162
Designer I	\$111
Designer II	\$116
Sr. Designer I	\$114
Sr. Designer II	\$121
Senior Designer III	\$127
Design Manager	\$138
Senior Design Manager	\$153
Assistant Engineer I	\$105
Assistant Engineer II	\$116
Assistant Engineer III	\$122
Assistant Engineer IV	\$126
Associate Engineer I	\$123
Associate Engineer II	\$132
Associate Engineer III	\$140
Senior Engineer I	\$142
Senior Engineer II	\$146
Senior Engineer III	\$150
Senior Engineer IV	\$153
Supervising Engineer	\$154
Project Manager I	\$138
Project Manager II	\$153
Project Manager III	\$190
Project Manager IV	\$213
Program Manager	\$213



<b>Willdan Engineering Proposed Labor Classification</b>	<b>Off-Site Staff Billing Rates for FY 2015-2016*</b>
Traffic Engineer I	\$166
Traffic Engineer II	\$181
City Engineer I	\$178
City Engineer II	\$213
Principal Project Manager	\$193
Deputy Director	\$193
Director	\$193
Principal Engineer	\$222
<b>CONSTRUCTION MANAGEMENT</b>	
Labor Compliance Specialist	\$92
Labor Compliance Manager	\$116
Utility Coordinator	\$121
Assistant Construction Manager	\$116
Construction Manager	\$141
Senior Construction Manager	\$152
Project Manager	\$165
Deputy Director	\$193
Director	\$193
<b>INSPECTION SERVICES</b>	
Supervising Public Works Observer	
Senior Public Works Observer I	\$116
Senior Public Works Observer II	\$123
Assistant Public Works Observer **	\$118/\$96
Public Works Observer**	\$125/\$107
<b>MAPPING AND EXPERT SERVICES</b>	
Calculator I	\$97
Calculator II	\$107
Senior Calculator	\$116
Survey Analyst I	\$107
Survey Analyst II	\$116
Certified Party Chief	\$127
Senior Survey Analyst ( Supervising Surveyor*)	\$131
Supervisor - Survey & Mapping	\$150



<b>Willdan Engineering Proposed Labor Classification</b>	<b>Off-Site Staff Billing Rates for FY 2015-2016*</b>
Principal Project Manager	\$193
<b>LANDSCAPE ARCHITECTURE</b>	
Assistant Landscape Architect	\$97
Associate Landscape Architect	\$111
Senior Landscape Architect	\$121
Principal Landscape Architect	\$145
Principal Project Manager	\$193
<b>PLANNING</b>	
Planning Technician	\$83
Assistant Planner	\$102
Associate Planner	\$111
Senior Planner	\$127
Principal Planner	\$145
Community Development Technician	\$83
Assistant Community Development Planner	\$102
Associate Community Development Planner	\$111
Senior Community Development Planner	\$127
Principal Community Development Planner	\$145
Deputy Director	\$193
Director	\$193
<b>ADMINISTRATIVE</b>	
Administrative Assistant I	\$63
Administrative Assistant II	\$70
Administrative Supervisor I	\$78
Administrative Supervisor II	\$97
Administrative Manager	\$116
<b>Notes:</b>	
* Rates are for off-site non-dedicated staff working in Willdan offices	
** Rates for Prevailing Wage Project	



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## EXHIBIT C

### Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:
  - a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
  - b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
  - c. Claims-made coverage is not acceptable.
  - d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
  - e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
  - f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
  - g. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
2. Automobile Liability:
  - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of hired, and non-owned automobiles.





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- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8 and 9 (hired, and non-owned).
  - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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  - d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
3. Worker's Compensation
- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit D.
  - b. Employer's Liability Coverage shall not be less than the statutory requirements.
  - c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
4. Errors and Omissions; Malpractice; Professional Liability. Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$5,000,000 per claim and annual aggregate. Consultant shall provide Retroactive Date for claims-made policies. Upon termination of this agreement, the same insurance requirements in Section 4 of this Exhibit will apply for a five (5) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.
5. Excess Liability. Excess liability with limits of not less than \$4,000,000 per claim and aggregate.
6. Other Insurance Provisions: The general liability, automobile liability coverages and excess liability shall contain the following provisions and endorsements:



- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the Risk Manager.
  - b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
  - c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
  - d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
  8. If Consultant maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.
  9. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
  10. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
  11. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written



notice.

12. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
13. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
14. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
15. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
16. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
17. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.



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**EXHIBIT D**

**Certificate of Compliance With Labor Code § 3700**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)

CONSULTANT

A handwritten signature in black ink, appearing to read "Daniel Chow", is written over a horizontal line. The signature is stylized and cursive.

Daniel Chow, President/CEO

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2016-076**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 27, 2016 by the following vote:*

**AYES :**       **COUNCILMEMBERS:**     *Davis, Ly, Detrick, Hume, Suen*

**NOES:**       **COUNCILMEMBERS:**     *None*

**ABSTAIN :**   **COUNCILMEMBERS:**     *None*

**ABSENT:**    **COUNCILMEMBERS:**     *None*

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**