

AGREEMENT FOR ON-CALL UTILITY DESIGN SERVICES

THIS AGREEMENT is made and entered into on this 19th day of May, 2015 (“Effective Date”), by and between the City of Manhattan Beach, a municipal corporation (“City”) and SA Associates, a California corporation (“Consultant”). City and Consultant are sometimes referred to herein as the “Parties”, and individually as a “Party”.

RECITALS

- A. City issued Request for Proposals No. 1030-15 for On-Call Utility Design Services (the “RFP”).
- B. In response to the RFP, Consultant submitted a proposal dated March 16, 2015 (the “Proposal”), which proposal is incorporated herein by this reference.
- C. City desires to use the services of Consultant as an independent contractor to provide the on-call Utility design services described in the RFP.
- D. Consultant represents that it is qualified and able to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.
- E. City desires to retain Consultant and Consultant desires to perform these services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Parties’ performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

Section 1. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the “Services”), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. On-Call Services. Consultant acknowledges that (i) this Agreement is for *on-call* services; (ii) Consultant is one of three firms selected by City to provide the Services; (iii) City is under no obligation to assign any Services to Consultant pursuant to this Agreement; and (iv) any assignments to Consultant pursuant to this Agreement may not include all of the Services listed in the Scope of Services.

C. Assignment of Task. Assignments will be made via Task Order. Prior to issuing a Task Order, City will request a project specific proposal from Consultant. If City accepts the proposal City will issue the Task Order, assigning the task to Consultant. Consultant shall not commence performance of work or services until issued a Task Order by City.

D. Time for Performance. Consultant shall commence the Services upon issuance of a Task order pursuant to paragraph C of this Section 1. Consultant shall perform all Services by the deadline established in the Task Order or, if no deadline is established, with reasonable diligence.

E. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

F. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

G. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

H. Prevailing Wage. Consultant acknowledges that some of the Services assigned to Consultant pursuant to a Task Order, including but not limited to inspection and land surveying work, may constitute "public works", as that term is defined in California Labor Code Section 1720. Therefore, as to those services that are "public works", Consultant shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in **Exhibit B** hereto

Section 2. Term of Agreement. This term of this Agreement shall be from the Effective Date through May 4 2017, unless earlier terminated as provided in Section 12 of this Agreement. City shall have the option, in its sole discretion, to extend the term for one additional year.

Section 3. Compensation.

(a) Total compensation paid to Consultant pursuant to this Agreement shall not exceed the sum of \$250,000, or such lesser amount as may be specified in the approved Task Order(s) issued pursuant to paragraph C of Section 1. The City Manager may authorize cumulative increases for additional work up to the lesser of \$20,000 or ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(b) The method of payment for this Agreement will be based on lump sum. The total lump sum price paid Consultant will include compensation for all work and deliverables, including travel and equipment, described in the approved Task Order. No additional compensation will be paid to Consultant in excess of the amount set forth in the approved Task Order, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between Consultant and City. Adjustment in the total lump sum compensation will not be effective until authorized by Task Order amendment approved by City.

(c) Progress payments may be made monthly in arrears based on the percentage of work completed by Consultant. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Task Order, City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 12 - Termination.

(d) No payment will be made prior to approval of any work, or for any work performed prior to City issuance of a Task Order for such work.

(e) Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by City's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal or as otherwise directed by the Contract Administrator, and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due City that include any equipment purchased under the provisions this Agreement. The final invoice should be submitted within 60-calendar days after completion of Consultant's work. Invoices shall be mailed to City's Contract Administrator at the following address:

Joe Parco, P.E.
City Engineer
3621 Bell Avenue
Manhattan Beach CA 90266

(f) Unless expressly provided for in the approved Task Order, Consultant shall not be entitled to reimbursement for any expenses. Any expenses incurred by Consultant that are not expressly authorized by the approved Task Order will not be reimbursed by City.

Section 4. Independent Contractor. The Parties agree, understand, and acknowledge that Consultant is not an employee of the City, but is solely an independent contractor. Consultant expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide Workers' Compensation or unemployment insurance or other employee benefits and that any person employed by Consultant shall not be in any way an employee of the City. As such, Consultant shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own Workers' Compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this

Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 4.

Section 5. Assignment. This Agreement shall not be assigned, in whole or in part, by Consultant without the prior written approval of City. Any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

Section 6. Responsible Principals.

Consultant's responsible principal, Shahnawaz Ahmad, shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. There shall be no change in Consultant's Responsible Principal or members of the project team, as listed in the approved Cost Proposal, which is a part of this Agreement, without prior written approval by City's Contract Administrator.

(a) City's Responsible Principal (also known as "Contract Administrator" shall be the City Manager, who shall administer the terms of the Agreement on behalf of City.

Section 7. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform the Services under this Agreement. All personnel engaged in the work shall be qualified to perform such Services.

Section 8. Permits and Licenses. Consultant shall obtain and maintain during the term of this Agreement all necessary licenses, permits, and certificates required by law for the provision of the Services, including a business license.

Section 9. Interests of Consultant.

(a) Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained.

(b) Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

(c) Consultant warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

Section 10. Insurance. [Check if Applicable]

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant.

2. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the Services required by this Agreement.

3. Workers' Compensation insurance as required by the State of California.

4. A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of \$2,000,000 per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by City. Further, Consultant agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

2. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials,

employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Consultant's insurance and shall not contribute with it.

3. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

5. Each insurance policy required by this Agreement shall be endorsed to state: should the policy be canceled before the expiration date, the issuing insurer shall mail thirty (30) days' prior written notice to the City.

6. If insurance coverage is canceled or reduced in coverage or in limits, Consultant shall within two (2) business days of notice from insurer, phone, fax and/or notify the City via certified mail, return receipt requested, of the changes to or cancellation of the policy.

(c) The City's Risk Manager may, in writing, amend and/or waive any or all of the insurance provisions set forth herein. In such case, the Consultant shall comply with the insurance provisions required by the City's Risk Manager.

(d) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide, unless waived in writing by City's Risk Manager.

(e) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(f) All insurance coverages shall be confirmed by execution of endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence. As an alternative to City forms, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(g) Any deductibles or self-insured retentions must be declared to and approved by City, and shall not exceed \$25,000.

(h) Consultant shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

Section 11. Indemnification.

(a) Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including reasonable fees of attorneys or other professionals and all costs associated therewith, and reimbursement of reasonable attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

(b) Other Indemnities.

1. Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph B. 2).

3. Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 11 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

(c) Workers' Compensation Acts not Limiting. Consultant's obligations under this Section 11, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

(d) Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

(e) Survival of Terms. The indemnification in this Section 11 shall survive the expiration or termination of this Agreement.

Section 12. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon Consultant written notice. Upon receipt of that notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends only a portion of this Agreement, such suspension shall not make void or invalidate the remainder of this Agreement.

(c) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall

have no other claim against City by reason of such termination, including any claim for compensation.

Section 13. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's Services.

Section 14. Information and Documents.

(a) Consultant covenants that all data, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, the City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) All Data required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of the City and may be used, reused or otherwise disposed of by City without Consultant's permission.

(d) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit said

books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(e) Consultant's covenants under this Section shall survive the termination of this Agreement.

Section 15. Default.

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to Consultant. If such failure by Consultant to make progress in the performance of work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, it shall not be considered a default.

(b) If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve the Consultant with written notice of the default. Consultant shall have ten (10) days after service upon it of such notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

Section 16. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

Section 17. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

Section 18. Changes in the Services. City shall have the right to order, in writing, changes in the Services or the services to be performed. Any changes in the Services requested by Consultant must be made in writing and approved by both Parties.

Section 19. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

Section 20. Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

Section 21. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

Section 22. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party’s regular business hours or by facsimile before or during the receiving party’s regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

If to City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attn: Mark Danaj, City Manager

If to Consultant: SA Associates
1130 West Huntington Drive, Unit 12
Arcadia, CA 910012
Attn: Shahnawaz Ahmad.

Section 23. Attorneys’ Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys’ fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

Section 24. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral. No alteration or variation of the terms of this Agreement shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Section 25. Amendment.

This Agreement may be amended or modified only by mutual written agreement of the parties. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City’s Contract Administrator.

Section 26. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 27. Venue. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Manhattan Beach.

Section 28. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, including Contractor's Proposal, the provisions of this Agreement shall prevail.

Section 29. Federal Provisions. The provisions set forth in **Exhibit C** are incorporated herein as though set forth in their entirety. Notwithstanding Section 28 of this Agreement, in the event of any discrepancy between the express provisions of this Agreement and the provisions of **Exhibit C**, the provisions of **Exhibit C** shall prevail.

Section 30. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

Section 31. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

Section 33. Diligent Performance. For and in consideration of the payments to be made, conditions mentioned, and work to be performed; City and Consultant each agree to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.

EXECUTED on the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

CONTRACTOR:

Mark Danaj
City Manager

Shahwan Alwan
SA ASSOCIATES

ATTEST:

Shahnawaz Ahmad
President

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney

EXHIBIT A

STATEMENT OF WORK

Scope of Work

The Scope of Work shall include, but not limited to the following tasks:

In general, the Consultant shall perform civil engineering design services resulting in contract documents (plans, specifications and cost estimates) for various projects on an as-needed basis. The Consultant shall provide a detailed schedule of the assigned project upon issuance of Notice to Proceed of that particular project. The Consultant shall also provide all field survey works required to complete the designs.

The Consultant's services shall include, but are not limited to, the following:

1. Research existing records of utility companies and agencies and coordinate the proposed improvements with existing field conditions.
2. Prepare all documentation required to obtain permits from any and all agencies having jurisdiction of the project.
3. Conduct an environmental assessment for each project and prepare all documentation required to comply with the California Environmental Quality Act (CEQA).
4. Provide all field survey and topographic work necessary to complete the design effort. Design level survey and base mapping of the project site shall be prepared in US Customary English units by a California licensed Land Surveyor in accordance with the City guidelines and in AutoCAD Computer Aided Design and Drafting (CADD) format. The horizontal datum shall be NAD 83 and the vertical datum shall be NAVD 88. All survey field notes shall be on forms provided by the City, shall be neatly completed in pencil, and shall become property of the City upon completion of the project. Informal field investigations including marking of removal areas may be required for some of the sidewalk, curb and gutter, and pavement replacement projects.
5. Complete the design of projects including plans, specifications, and engineer's construction cost estimate. The Consultant shall contact manufacturers and/or contractors to verify the engineer's estimate prior to submitting to the City. Specifications shall be prepared in Microsoft Word and an electronic copy of the final version shall be furnished to the City. The City will provide the specification boiler plate to the Consultant.
6. All preliminary and bid sets of plans shall be plotted on bond or velum using the AutoCAD program. All drawings shall be completed per the City of Manhattan Beach CADD Standards
7. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultant's licensed professional engineer in responsible-charge of the project. These signed originals will then become the property of the City.
8. The Consultant shall provide support services during the bidding and construction phases of the project, including:
 - A. The Consultant shall respond to bidder inquiries during the bidding process, including preparation of any addenda. Upon award of the construction contract, the Consultant shall attend the pre-construction meeting.
 - B. The Consultant shall review and approve all submittals and shop plan drawings required supporting the construction contract. The Consultant shall complete shop drawings reviews within two (2) weeks of receipt. Contract Change Order reviews shall be completed within two (2) working days of receipt.

- C. The Consultant shall respond to written Requests for Information (RFI) to provide clarification or resolve discrepancies in the contract documents. Responses shall be completed within three (3) working days.
 - D. The Consultant shall provide periodic field reviews and bring to the attention of the City of Manhattan Beach any defects or deficiencies in the work by the construction contractor which the Consultant may observe. The Consultant shall have no authority to issue instruction on behalf of the City of Manhattan Beach, or to deputize another to do so.
9. Upon the completion of construction, as-builts shall be submitted to the City. The Consultant shall incorporate all changes to the plans electronically with all necessary revision notations. Once plans have been updated, a signed set of as-built mylars shall be submitted to the City with an electronic copy (in AutoCAD and pdf formats) of the final as-built drawings via CD or e-mail.
 10. The Consultant shall monitor the project progress, maintain project files, and control the quality of the work performed by in-house staff and/or sub-consultants. Incomplete (not meeting targeted completion) or poor quality work will not be accepted. The Consultant will need to revise the documents within a revised schedule set by the City, which may require overtime. No additional regular or overtime hours shall be approved for the required revisions.
 11. Attend meetings with the City staff as required.
 12. Coordinate plan check, design topics, permits and any other issues with the City, other Agencies, and all utility companies as required. The Consultant shall be the liaison with affected agencies
 13. The Consultant shall be responsible for reviewing and approving addenda and clarifications to plans and specifications.

a) Preliminary Design

Review available record plans, existing/proposed conditions and requirements.

Attend the Field Review Meeting; prepare Field Review Report

Conduct a field survey in order to confirm the accuracy of any existing drawings, surveys, streets, and utility locations data obtained. Consultant is expected to conduct additional surveys based on the project requirements.

b) Development of Detail Plans, Specifications and Estimate (PS&E):

All reports, plans, specifications and quantity calculations shall conform to criteria, policies, procedures and standards of Caltrans and the City, and shall be made available to the City at stages specified in the milestone schedule and upon request.

Construction plans shall adhere to City of Manhattan Beach Standard Construction Drawing standards. The Consultant shall produce, at the Consultant's sole cost and expense, blank reproducible sample plan sheets and any needed standard drawings. Standard drawings and standard plans shall be incorporated into the Contract Plans where applicable.

Each plan sheet shall bear the State of California Registered Professional Engineer registration seal within signatures, license number and registration certificate expiration date of the Engineer who is in responsible charge for developing the plan. Each plan sheet shall be signed by the engineer who performed the independent plan check.

Consultant shall prepare complete contract specifications based on the Manuals/Standards section 4.2.3.

A list of contract pay items with the descriptions, item codes and estimated quantities shall be included in the front of the special provisions.

The Consultant shall prepare quantity calculations for items that are applicable to this project, and prepare cost estimates.

Quantities for all contract pay items shall be substantiated by calculations. Quantity calculations shall be neat and orderly and shall show all sketches, diagrams, and dimensions necessary to allow them to be independently used by field inspectors during construction.

Electronic files for all structural details and calculations shall be submitted at the end of the contract or when requested by the City.

All electronic software developed, databases generated, spreadsheets and intellectual properties developed during the life of the Agreement shall become the property of the City.

c) Environmental Documents and Permit Compliance

Specific environmental documentation work as may be required by the funding agency and the City including, but not be limited to the following: prepare Preliminary Environmental Study (PES), CEQA compliance documentation, technical studies, , NPDES permit, Regional Board Section 401 certification, any coordination as required completing the environmental NEPA and CEQA work, and any encroachment permits required for the project from agencies such as Caltrans, County of Los Angeles, the City and any other having jurisdiction.

d) Utility Research and Coordination

- (1) Research and obtain file copy of utility maps within the project limits for existing and/or proposed facilities.
- (2) Prepare preliminary plans with utility notices/questionnaires to be sent to utility companies.
- (3) Plot existing and proposed utilities in plan (and profile when applicable)
- (4) Monitor response of utility notices received by the City and then make recommendations for mitigating conflicts.
- (5) Attend coordination meetings when required regarding adjustments and relocations.
- (6) Pothole information, where required, shall be coordinated by the Consultant.

e) Construction Bidding Phase

Bidding procedures will be the responsibility of the City. While the PS&E construction package is being advertised for bids, all questions concerning the intent shall be referred to the City for resolution. In the event that any items requiring interpretation in the drawings or specifications are discovered during the bidding period, said items shall be analyzed by the Consultant for decision by the City, or by a covering change order after the award of the construction contract.

f) Construction Support Phase

- (1) All construction support work shall be coordinated with the City.
- (2) Consultant shall furnish, at the consultant's sole cost and expense, all necessary drawings for corrections and change orders required by errors and omissions of the Consultant. The original tracing(s) of the drawings and contract wording for the change orders shall be submitted to the city for duplication and distribution.
- (3) Consultant will receive written notification of the award of a construction contract. Upon such notification, Consultant will proceed with the services required by the Agreement.
- (4) Consultant is required to attend the pre-construction meeting with the successful construction contractor upon notification by the City.

(5) Consultant shall review and approve all submittals and shop plan drawings required supporting the construction contract. Consultant shall complete shop drawings reviews within one (1) weeks of receipt. Contract Change Order reviews shall be completed within two (2) working days of receipt.

(6) Consultant shall be available as requested by the City to resolve discrepancies in the contract documents. Consultant shall bring to the attention of the City any defects or deficiencies in the work by the construction contractor which the Consultant may observe. Consultant shall have no authority to issue instruction on behalf of the City, or to deputize another to do so.

(7) The Consultant shall prepare and deliver to the City the final as-built plans incorporating field marked prints supplied by the City. Upon completion of construction, the City will submit field-marked prints to Consultant. Consultant shall incorporate all changes to the plans electronically with all necessary revision notations and submit to the City.

2. Description of Required Services

All work shall be performed in conformance with the State of California, Los Angeles County and/or City of Manhattan Beach policies, procedures and standards.

Consultant shall carry out the instructions received from the City and shall cooperate with the City and other involved agencies.

The Consultant has total responsibility for the accuracy and completeness of the plans and related designs, specifications and estimates prepared and shall check all such materials accordingly. The plans will be reviewed by the City for conformity with the requirements of the Agreement. Reviews by the city do NOT include detailed review or checking of design or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of Consultant.

Consultant or its sub consultants shall not incorporate in the design any materials or equipment of single or sole source origin without written approval of the City.

The plans, specifications, estimates, calculations, and other documents furnished under the Agreement shall be of a quality acceptable to the City and State. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct, checked, and dated and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that of similar types produced by the State and set forth in related Caltrans manuals. The Consultant shall modify its work as necessary to meet the level of acceptability defined by the criteria above.

The Consultant shall have a quality control plan in effect during the entire time work is being performed under the Agreement. The Quality control plan shall establish a process whereby plans are independently checked, corrected and back checked, and all job related correspondence and memoranda dated and received by affected persons and then bound in appropriate job files.

3. Manuals/Standards

Where applicable, engineering design of all PROJECT improvements shall be compatible and in accordance with the following as applicable:

Caltrans Highway Design Manual

Caltrans Standard Plans

Caltrans Standard Specifications

Los Angeles County Hydrology Manual

American Public Works Association Standard Specifications for Public Works Construction

American Public Works Association Standard Plans

American Water Works Association

City of Manhattan Beach Standard Plans

It will be the responsibility of the Consultant to verify that it has received the latest version or update of these documents.

Plans for the improvements on the State Highway shall be prepared in accordance with Caltrans recommended practice for detailing and scope of work. Caltrans Standard plans shall be utilized where applicable and may be called out on the plans as reference.

Local street improvement and utility plans shall adhere to City of Manhattan Beach Standard Plans and the Standard Specifications for Public Works Construction. Plans shall be computer drafted in AutoCAD compatible format and shall adhere to the current City of Manhattan Beach Public Works Department CAD standards.

The Consultant's work will be subject to inspections by representatives of the City, County, State and FHWA.

Submittal requirements:

4. Construction plans:

a) 60% PS&E (Unchecked Details)

Unchecked plan details shall consist of 60% design and detailed plans ready for the independent design check.

Three sets (3) full size (24"x36") of design plans. The following submittals may be submitted electronically: draft SSP, preliminary quantities and estimates, pay item list, and design calculations.

b) 100% PS&E

The Consultant shall submit the following documents for review and approval:

Four sets (4) full size (24"x36") signed and sealed prints of checked design

Electronic copies of Special Provisions

Electronic copies of cost estimate and check quantity calculations

Electronic copies of design calculations

Electronic copies of design check calculations

Other reports as needed by the City of Manhattan Beach

The City will review and comment on the PS&E package as soon as possible. The turnaround goal is within four (4) weeks of receipt of the complete PS&E package. One (1) copy of those documents with comments will be returned to the Consultant.

5. Final PS&E

The Consultant shall submit the following documents for review and approval:

Electronic sets of signed final design plans

Electronic copies of signed final specifications

Electronic copies of final cost estimate and final quantity calculations

Electronic copies of final design calculations

Electronic files in its original format and in PDF of all plans, specifications, and estimates

6. Coordination

1. Coordination with the City, other consultants and other involved agencies will be required to achieve compatible designs, phasing of construction with existing or designed conditions, and timely delivery of the contract PS&E. Coordination may include, but not be limited to, coordination with Caltrans, FHWA, Regional Water Quality Control Board and other agencies.

The City will decide the manner in which the coordination of individual matters is undertaken. At the City's option, coordination efforts may be performed by the Consultant's direct contact, by the Consultant acting through the City or by the City only. When coordination efforts require Agreement, such Agreement shall be coordinated through the City.

a) Work To Be Performed or Provided By the City

1. Prepare and execute all utility Agreements
2. Prepare and process requests to the City
3. Distribute public information
4. Provide survey controls (bench mark and centerline monument records) necessary for design surveys
5. Advertise and award construction contracts
6. Prepare and execute Agreements with other agencies or entities
7. Administer construction contract
8. Resolve all construction claims

Upon contract award, City will:

Provide copies of record plans

Provide standard city boilerplate specifications

Furnish electronic design file with City title block and title sheet (24" x 36")

Process plans for governmental agency approvals having jurisdiction over the project and pay for all plan check fees.

Act as a liaison with the appropriate decision making bodies.

b) Project Progress

Progress Review Meetings shall be held at intervals deemed appropriate by the City. At or before each of these meetings, the Consultant shall furnish two (2) copies of all completed or partially completed, plans, specifications and estimates which have been developed or altered since the last Progress Review Meeting.

Progress Reports shall be submitted at monthly intervals, indicating progress achieved during the reporting period in relation to the progress scheduled. The Consultant shall provide the City with two (2) copies of the Progress Report at least four (4) working days before the Monthly Progress Meeting.

c) Standards of Work

7. Conflicts / Design Exceptions.

In case of conflict, ambiguities, discrepancies, errors, or omissions, Consultant shall submit the matter to City for clarification. Any work affected by such conflicts, ambiguities, discrepancies, errors

or omissions which is performed by Consultant prior to clarification by City shall be at Consultant's risk and expense.

In event that any non-standard features become necessary during the initial design, Consultant shall prepare the necessary design exceptions following Caltrans guidelines modified to fulfill requirements of compliance with approved funding. Consultant shall certify project including PS&E in accordance with Caltrans Local Assistance Procedures.

8. Plans, Specifications and Estimates (PS&E).

PS&E shall be prepared in English units and in conformance with the latest editions of applicable standards. As part of the work involved in the preparation of the PS&E, Consultant shall prepare Special Provisions pertaining to items of work included in the plans that are not addressed in the latest editions of applicable standards. Consultant will furnish and compile Special Provisions to include City contract administration requirements.

EXHIBIT B
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Consultant acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, Consultant shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Consultant shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Consultant shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Consultant and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Consultant or any subcontractor cease to be registered with DIR at any time during the duration of the project, Consultant shall immediately notify the City.

4. Pursuant to Labor Code Section 1771.4, Consultant’s Services are subject to compliance monitoring and enforcement by DIR. Consultant shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Consultant acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Consultant shall post such rates at each job site covered by this Agreement.

6. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

7. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

8. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Consultant and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Consultant shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Consultant and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Consultant or any subcontractor becomes debarred or suspended during the duration of the project, the Consultant shall immediately notify the City.

10. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of 8 hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Consultant hereby certifies as follows:

“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 will comply with such provisions before commencing the performance of the work of this contract.”

12. For every subcontractor who will perform work on the project, Consultant shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Consultant shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance,

including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Consultant shall indemnify, hold harmless and defend (at Consultant's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Consultant, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Consultant under this Section shall survive the termination of the Agreement.

EXHIBIT C

REQUIRED FEDERAL PROVISIONS

ARTICLE I - CONSULTANT'S REPORTS OR MEETINGS

- A. Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. Consultant's Project Manager shall meet with City's Contract Administrator, as needed, to discuss progress on the Agreement.

ARTICLE II - FUNDING REQUIREMENTS

- C. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- D. This Agreement is valid and enforceable only, if sufficient funds are made available to City for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or City governing board that may affect the provisions, terms, or funding of this Agreement in any manner.
- E. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.
- F. City has the option to void the Agreement under the 30-day cancellation clause, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

ARTICLE III - DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26. If the Agreement has a DBE goal, Consultant must meet the goal by using DBEs as subcontractors or document a good faith effort to have met the goal. If a DBE subcontractor is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subcontractor if the goal is not otherwise met.

A DBE may be terminated only with written approval by City and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting City's consent for the proposed termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f). Consultant shall comply with the requirements of Exhibits 10-J and 17-F

of the Caltrans Local Assistance Procedures Manual, copies of which are attached hereto and incorporated herein.

ARTICLE IV - COST PRINCIPLES

- G. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- H. Consultant also 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.
- I. 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 System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.

ARTICLE V - CONTINGENT FEE

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

ARTICLE VI - RETENTION OF RECORDS/AUDIT

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 Agreement pursuant to Government Code 8546.7; Consultant, subcontractors, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant that are pertinent to the Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE VII - DISPUTES

- J. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Administrator and Public Works Director, who may consider written or verbal information submitted by Consultant.
- K. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- L. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

ARTICLE VIII - AUDIT REVIEW PROCEDURES

- M. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.
- N. Not later than 30 days after issuance of the final audit report, Consultant may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- O. Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

ARTICLE IX - SUBCONTRACTING

- P. Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- Q. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- R. Any substitution of subcontractors must be approved in writing by City's Contract Administrator prior to the start of work by the subcontractor.

ARTICLE X - EQUIPMENT PURCHASE

- S. Prior authorization in writing, by City's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract

exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

- T. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by City's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- U. Any equipment purchased as a result of this Agreement is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City." 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.
- V. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE XI - INSPECTION OF WORK

Consultant and any subcontractor shall permit City, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

ARTICLE XII - SAFETY

- W. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by City Safety Officer and other City representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- X. Pursuant to the authority contained in Section 591 of the Vehicle Code, City has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all

reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- Y. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

ARTICLE XIII - OWNERSHIP OF DATA

- Z. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will automatically be vested in City; and no further agreement will be necessary to transfer ownership to City. Consultant shall furnish City all necessary copies of data needed to complete the review and approval process.
- AA. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- BB. Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by City of the machine-readable information and data provided by Consultant under this Agreement; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by City of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by Consultant.
- CC. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

ARTICLE XIV - CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- DD. If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- EE. Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.
- FF. Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

GG. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

ARTICLE XV - CONFIDENTIALITY OF DATA

HH. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.

II. Permission to disclose information on one occasion, or public hearing held by City relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

JJ. Consultant shall not comment publicly to the press or any other media regarding the Agreement or City's actions on the same, except to City's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

KK. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by City, and receipt of City's written permission.

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

MM. All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity other than City.

ARTICLE XVI - NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XVII - EVALUATION OF CONSULTANT

Consultant's performance will be evaluated by City. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the Agreement record.

ARTICLE XVIII - STATEMENT OF COMPLIANCE

- NN. 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.
- OO. During the performance of this Agreement, Consultant and its subcontractors 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 subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

ARTICLE XIX - DEBARMENT AND SUSPENSION CERTIFICATION

- PP. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.
- QQ. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

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

ARTICLE XX - STATE PREVAILING WAGE RATES

SS. Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with the California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

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

ARTICLE XXI - CONFLICT OF INTEREST

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

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

WW. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

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

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

ARTICLE XXII - REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XXIII - NON-DISCRIMINATION CLAUSE

During the performance of this Contract, Consultant and its subconsultant 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 thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

ARTICLE XXIV – ADDITIONAL REQUIREMENTS

The completed Exhibits 10-F, 10-I, 10-01, and 10-P of the Caltrans Local Assistance Procedures Manual are attached hereto and incorporated herein.