



## **REQUEST FOR PROPOSALS**

*THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC) INVITES  
CONSULTANTS TO SUBMIT THEIR PROPOSALS FOR:*

### **FORT ORD REGIONAL TRAIL AND GREENWAY (FORTAG) CALIFORNIA AVENUE SEGMENT FINAL DESIGN AND RIGHT OF WAY**

You are invited to submit your proposal for the services to complete the above project. Proposals are due via email to the project manager, Janneke Strause, [janneke@tamcmonterey.org](mailto:janneke@tamcmonterey.org) by **12:00 noon Pacific Standard Time on [Monday, April 24, 2023]**.

The Request for Proposals and supplemental information, if any, are available on the TAMC website ([www.tamcmonterey.org](http://www.tamcmonterey.org)) in Adobe Acrobat (PDF) format or may be obtained by contacting the project manager specified above or at the TAMC offices located at 55-B Plaza Circle, Salinas, CA 93901.



**TRANSPORTATION AGENCY FOR MONTEREY COUNTY**

**DATE:** March 22, 2023

**TO:** Interested Consultants

**FROM:** Todd A. Muck, Executive Director

**SUBJECT:** FORTAG – California Avenue Segment – Final Design and Right of Way

**INVITATION**

You are invited to submit a Proposal for the referenced services.

This request is seeking services that qualify as “Architecture and Engineering” (A&E) services under state law. TAMC will negotiate the project budget after selection of the top ranked consultant. The cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal. Upon notification if your firm is selected as the top ranked firm, TAMC will require completion of the appropriate Caltrans cost proposal to initiate budget negotiations.

Please submit one (1) digital copy of your Proposal to the office of the Transportation Agency for Monterey County via email to [janneke@tamcmonterey.org](mailto:janneke@tamcmonterey.org) by **12:00 noon PST on Monday, April 24, 2023**. There is no requirement to submit a paper copy of your proposal. Proposals received after the date and time specified above will not be considered.

Proposals shall be considered firm offers to enter into a contract, as described in this RFP for a period of ninety (90) days from the time of submittal.

Proposals and inquiries relating to this Request for Proposals shall be submitted to:

Janneke Strause  
Project Manager  
55B Plaza Circle, Salinas, CA 93901  
[janneke@tamcmonterey.org](mailto:janneke@tamcmonterey.org)

Email inquiries, including the submittal of the Proposal, relating to this Request for Proposals should include “FORTAG – California Avenue Segment – Final Design and Right of Way” in the subject header.

## **BACKGROUND**

The Transportation Agency for Monterey County (“TAMC” or the “Agency”) is a state-designated public agency with regional transportation planning responsibilities, including rail planning, that cross city-county boundaries. TAMC is committed to planning, funding and delivering transportation projects for the region. The Agency is also committed to providing information to the public about its projects, plans and activities, ensuring public participation and fostering public understanding of its functions.

TAMC’s Board of Directors includes twenty-three members who consist of local officials from each of its twelve incorporated cities and five county supervisorial districts, and ex-officio members from seven public agencies. The mission of TAMC is to proactively fund and plan a transportation system that enhances mobility, safety, access, environmental quality and economic activities by investing in regional transportation projects for Monterey County residents, businesses and visitors.

## **PROJECT DESCRIPTION**

This request for proposals will be used by TAMC to select a consultant or consultant team to perform land surveying, engineering design, right-of-way, utility relocation, community and stakeholder outreach, bidding support, and grant application support for the California Avenue segment of the Fort Ord Regional Trail and Greenway (FORTAG). The design and right-of-way will be reviewed and approved by TAMC and the City of Marina.

Attachment A is a draft Scope of Work. A final Scope of Work will be made a part of the professional services agreement between TAMC and the consultant. A copy of the standard TAMC agreement anticipated to be utilized is Attachment B. Any requests to modify the standard contract provisions must be made as part of the request for proposals. A single document will be prepared between the Consultant and TAMC consistent with the provisions of these attachments.

It is important that the consultant have the capability to work closely with Agency staff. The consultant or consultant team must be prepared to undertake whatever liaison and meetings are required to satisfy this requirement.

## **PROJECT BUDGET**

The estimated budget for this work is \$1,328,000 for design and right-of-way. There is no federal funding on this project.

## **PROJECT SCHEDULE**

This project is anticipated to take approximately 1.5 years to complete, starting in September 2023 and being completed by February 2025.

---

**SELECTION PROCESS**

TAMC will establish a review committee to review the proposals. This review may be followed by an oral interview between a review committee and the firm(s) that respond(s) best to the RFP. Based on the recommendations of the review committee, TAMC staff will issue a "Notice of Intent to Award" notice to all responders, indicating staff's intent to negotiate with the specific firm considered to be the most qualified consultant or consultant team.

Staff will then attempt to negotiate a final Scope of Work and a Budget for the project with that firm. The final Scope of Work will include a full description of each task, a description of deliverable products, and a schedule of the due dates for the deliverable products and other important milestones. The Budget shall include an estimated cost per task and use the appropriate Caltrans cost proposal format. Upon successful completion of negotiations, the consultants or consultant teams will be recommended to the TAMC Board for final selection and contract approval.

Should the most qualified consultant or consultant team and TAMC fail to successfully negotiate a final scope of work and a mutually agreed upon budget for these consulting services, then TAMC reserves the right to enter negotiations with the next most qualified candidate for performance of the work.

Further, the Agency may, or may not, also negotiate contract terms with selected proposers prior to award, and expressly reserves the right to negotiate with several proposers simultaneously and, thereafter, to award a contract to the proposer offering the most favorable terms to the Agency. Proposals submitted, therefore, should contain the proposers' most favorable terms and conditions, because the selection and award may be made without further discussion with any proposer. The Agency will submit the proposal considered to be the most responsive and competitive to the Board of Directors for consideration and selection. The Agency reserves the right to accept or reject all submitted proposals, to waive minor irregularities, and to request additional information or revisions to offers, and to negotiate with any or all proposers at any stage of the evaluation.

---

**The evaluations will be based upon the following criteria:**

1	<b><u>Firm Profile &amp; Project Team:</u></b> Do the qualifications of key personnel to be assigned to the project coincide with tasks listed in the Scope of Work? Do assigned personnel and sub-consultants have requisite education, experience, and professional qualifications? Does the firm’s organizational structure show sufficient depth for its present workload, and do assigned personnel have sufficient availability for project? Does the firm accept the contract terms as proposed?	20 points
2	<b><u>Relevant Project Experience:</u></b> Has the firm demonstrated the ability to successfully provide services for projects of a similar complexity, demonstrated experience with innovative engineering design and greenway projects, Caltrans PS&E, bicycle and pedestrian bridge design, ADA design, , utility relocation, land surveying, and community outreach during design process? Is the firm familiar with the former Fort Ord habitat and related environmental issues?	20 points
3	<b><u>Specific Approach:</u></b> How will the firm, specifically the key personnel assigned to the project, apply its techniques and resources to ensure the project is properly completed? How will key personnel approach problems when they arise? Has the firm described its ability to achieve specified project delivery goals? Has the firm considered alternative concepts to achieve the desired goals?	50 points
4	<b><u>References:</u></b> Are the firm’s references from past clients and associates favorable? Does the firm show financial and operational stability?	10 points

**Total of 100 possible points**

**QUESTION & ANSWERS, REQUESTS FOR CLARIFICATION OR EXCEPTIONS, ADDENDA**

This Request for Proposals and any addenda will be posted on the Agency’s website ([www.tamcmonterey.org](http://www.tamcmonterey.org)). Questions and answers regarding the request for proposals will also be posted on the website. All prospective proposers are responsible for checking the website for any addenda to the Request for Proposals, and the proposal must acknowledge all addenda issued in order to be considered responsive. To receive email notifications of addendums to this Request for Proposals, prospective proposers must submit an email request to the Project Manager.

Any requests for clarification or exceptions to requirements in this Request for Proposals must be received by the Agency no later than **12 noon, PST, on Monday, April 10, 2023**, to guarantee response or consideration. Responses to questions concerning this Request for Proposals posed before this deadline will be posted on the Agency’s website ([www.tamcmonterey.org](http://www.tamcmonterey.org)).

**SUBMITTAL REQUIREMENTS/PROPOSAL FORMAT**

All interested firms are required to submit one (1) digital copy of their Proposal to perform the requested consulting services. The Proposal must include the names and qualifications of all personnel to be employed on the project. The Proposal should provide a short description of the firm's experience with projects that relate to this Scope of Work (Attachment A). A list of relevant past clients should be included.

**A. Project Team**

The Proposal shall clearly identify a Project Manager and include the names and qualifications of all personnel of the proposed team to be assigned to the contract and a chart representing the proposed organizational structure of the team. The Proposal shall demonstrate that the key personnel have the time available to work on the project. The Proposal shall include the estimated number of hours individual personnel will dedicate to the project.

**B. Demonstrated Knowledge**

The Proposal shall include the assigned project team's demonstrated knowledge of, expertise and experience with providing similar services and completing similar types of contracts.

**C. Work Plan**

The Proposal shall include the consultant's proposed approach to the development and implementation of the scope of work, broken out by tasks which demonstrate the consultant's knowledge and understanding of the project and the constraints and challenges associated with performing the tasks outlined in the scope of work.

**D. Proposed Schedule of Work and Deadlines**

The Proposal must include availability of the Project Team to conduct work within the anticipated timeframes.

**E. References**

The Proposal shall include at least three (3) recent references from past clients for similar types of work.

---

**PROPOSED SCHEDULE**

<b>Date/ Timeframe</b>	<b>Task</b>
March 8, 2023	Issue Notice of Intent to publish Request for Proposals
March 22, 2023	Distribute RFP
April 10, 2023	Deadline for questions and/or requests for clarification or exceptions by 12:00 pm noon PST
April 24, 2023	<b>Proposals due by 12:00 pm noon PST</b>
April 25 – May 5, 2023	Review and rank proposals
May 15 – 19, 2023	Hold interviews (if necessary)
May 22, 2023	Determine top ranked consultant, send Tentative Award letter, negotiate contract
June 28, 2023	Bring contract to TAMC Board for approval

**MISCELLANEOUS****A. Modification or Withdrawal of Submittals**

Any Proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, however, the modified Proposal must be received by the time and date specified above.

**B. Property Rights**

Any Proposals received within the prescribed deadline become the property of TAMC and all rights to the contents therein become those of TAMC.

**C. Confidentiality**

Before award of the contract, all Proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all Proposals), all responses will be regarded as public records and will be subjected to review by the public. Any language purporting to render all or portions of the Proposal confidential will be regarded as non-effective and will be disregarded.

**D. Amendments to Request for Qualifications**

TAMC reserves the right to amend the Request for Proposals by addendum before the final Proposal submittal date.

**E. Non-Commitment of TAMC**

This Request for Proposals does not commit TAMC to award a contract, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services. All products used or developed in the execution of any contract resulting from this Request for Proposals will remain in the public domain at the completion of the contract.

**F. Conflict of Interest**

The prospective consultant shall disclose any financial, business or other relationship with TAMC that may have an impact upon the outcome of this contract or TAMC construction project. The prospective consultant shall also list current clients who may have a financial interest in the outcome of this contract or TAMC projects that will follow. In particular, the prospective consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on TAMC projects.

**G. Nondiscrimination**

The prospective consultant must certify compliance with nondiscrimination requirements of TAMC pertaining to the development, implementation and maintenance of a nondiscrimination program. The prospective consultant's signature affixed to and dated on the cover letters shall constitute a certification under penalty of perjury under the laws of the State of California that the proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

**H. Final Selection and Protests**

The RFP process is considered concluded when a "Tentative Award" letter is sent to all participating consultants indicating which consultant will be recommended for Board approval. The firm recommended is not a final selection and no contract is certain until approved by TAMC Board of Directors.

Protestants shall submit a detailed written statement of protest to:

Transportation Agency for Monterey County  
55-B Plaza Circle  
Salinas, CA 93901

no later than five (5) business days after receipt of the Tentative Award letter described above.

**QUESTIONS**

If you need assistance or have any questions, please email the Project Manager, Janneke Strause at [janneke@tamcmonterey.org](mailto:janneke@tamcmonterey.org).

Attachments:

- A. Scope of Work
  - B. Sample TAMC Standard Agreement for Professional Services
  - C. Sample Invoice Cover Page Format
  - D. FORTAG California Avenue Segment – Project Map
-

**ATTACHMENT A  
SCOPE OF WORK**

**ATTACHMENT A  
SCOPE OF WORK****Fort Ord Regional Trail and Greenway (FORTAG)  
California Avenue Segment  
Design and Right-of-Way****PROJECT BACKGROUND**

The Fort Ord Regional Trail and Greenway (FORTAG) is a proposed 28-mile, 12-ft wide paved regional bicycle and pedestrian trail through parks and open spaces connecting the cities of Seaside, Marina, Del Rey Oaks, Monterey, and unincorporated community residents to California State University Monterey Bay (CSUMB), the Fort Ord National Monument and the Monterey Bay Sanctuary Scenic Trail. FORTAG has several distinct segments with full independent utility, allowing the Transportation Agency for Monterey County (TAMC) to fund and construct the entire trail over time.

FORTAG is a grassroots project that has achieved several planning and funding milestones. FORTAG is included in the Measure X Expenditure Plan, with \$20 million allocated to the project over time. This local funding commitment demonstrates broad support for FORTAG from individuals, community organizations and agencies. FORTAG is supported by environmental and active transportation groups such as the Monterey Off-road Cycling Association, Citizens for Sustainable Marina & Seaside, and the Sierra Club; commerce and tourism groups including the Monterey Chamber of Commerce Economic Vitality Committee and the Monterey County Visitor's Bureau; regional government agencies such as the Fort Ord Reuse Authority; recreation interests such as California State Parks, the Monterey Peninsula Regional Parks District and the Audubon Society; and educational institutions such as California State University Monterey Bay and Monterey Peninsula Community College and many more.

This Request for Proposals seeks qualified consultants or consultant teams to perform public outreach, land surveying, engineering design, right-of-way, and construction support services for a 1.8-mile segment of the CSUMB Loop North Segment, also known as the California Avenue Segment of FORTAG in the City of Marina ("the Project" for purposes of this RFP). The Project begins on California Avenue at the intersection with Carmel Avenue and runs southwest along California Avenue, crossing Imjin Parkway then continuing along 5<sup>th</sup> Avenue to 8<sup>th</sup> Street. At this point, it heads northeast through open space where it will cross Imjin Road via a new pedestrian and bicycle overcrossing to a connection point with the FORTAG Segment 2 trail.

Along California Avenue, from Carmel Avenue to Patton Parkway, the Project follows existing sidewalks. At Patton Parkway, the Project becomes a 12' wide bicycle and pedestrian path along the northwest side of California Avenue. At Imjin Parkway, a protected intersection is proposed as part of the project. On the south side of Imjin Parkway, the Project's bicycle and pedestrian path switches to the southeast side of California Avenue where it continues south along 5<sup>th</sup> Avenue to 8<sup>th</sup> Street, then veers away from existing roads and heads northeast through open space then crosses Imjin Road via a new bicycle and pedestrian overcrossing. The Project terminates on the east side of Imjin Road where it will connect to the planned Segment 2 of FORTAG.

## **GOALS**

On March 25, 2020, the Transportation Agency for Monterey County certified the Final Environmental Impact Report and approved a Master Agreement for the entire FORTAG project. The cities of Marina, Seaside, Del Rey Oaks, and Monterey, the County of Monterey, and the Monterey Peninsula Regional Park District have also entered into that Master Agreement with TAMC as the lead agency for design and construction of the majority of FORTAG trail segments. The California State University Monterey Bay has entered into a separate Master Agreement with the Transportation Agency. The FORTAG trail alignment runs through parks and open space that the community highly values. For this reason, the design process shall be cooperative and interactive with stakeholders. Strong community outreach and participation will be a critical component to make the FORTAG project more competitive for state, federal and private matching grant funds, and to fulfill TAMC's commitment to Stakeholder Jurisdictions.

The goals of this scope of professional services are to perform community and stakeholder engagement, grant application support, land surveying, engineering design, right-of-way, utility relocation, bidding support and design support during construction. The design, final alignment, and right-of-way shall be reviewed and approved by TAMC and the City of Marina.

## **SCHEDULE**

The Consultant shall develop a schedule with the following deadlines:

September 2023	Begin Design
December 2024	Right-of Way Certification
May 2025	Construction Award
October 2026	Construction Completion

## STAKEHOLDER JURISDICTIONS

This is a multijurisdictional project. The following “Stakeholder Jurisdictions” shall be closely involved in the development of the Project’s design and are included in the design approval:

- TAMC
- City of Marina

## SCOPE OF WORK

The scope of work for this Project is organized into five main parts intended to accomplish the Project goals:

- Project Management
- Land Surveying
- Engineering Design (PS&E)
- Right-of-way and Utility Relocations
- Public Outreach and Grant Support
- Bid Support and Design Support During Construction

The consultant may propose a reorganization or consolidation of these tasks as well as any additional tasks needed to meet project goals. However, all required tasks and any optional tasks must be included in the proposal.

### **Task 1: Project Management**

#### Task 1.1 Project Management:

Consultant shall serve as overall Project Manager during the entire duration of the Project for the preparation of environmental approvals, Plans, Specifications and Estimates (PS&E), Bid Phase Support, Construction Support and a post construction traffic study for the Project. The general project management responsibilities include:

- Prepare and update master project schedule,
- Coordinate progress meetings,
- Provide coordination with other agencies,
- Manage subconsultants,
- Oversee all the project components listed in this Scope of Work,

- Effectively manage budget and schedule,
- Ensure Quality Assurance and Quality Control Measures are completed,
- Prepare invoices at the end of each month of previous month's work.

#### Task 1.2 Progress Meetings:

Consultant shall provide meeting coordination and oversight. At the outset of this Project, an initiation meeting shall be scheduled to establish the project team, review the scope of work and project schedule and establish roles and lines of communications. For estimating purposes, Consultant shall include twenty-four (24) meetings at the TAMC offices (appropriate subconsultants in attendance and by teleconference where possible to save cost). In addition to the face-to-face meetings, teleconferences and video-based meetings shall be conducted, as necessary. Consultant shall prepare agendas and meeting minutes highlighting decisions made and action items.

#### Task 1.3 Review of Existing Documents and Environmental Impact Report:

Consultant shall review the goals and objectives of the Fort Ord Regional Trail & Greenway project, as described in TAMC's Measure X Transportation Plan Policies and Project Descriptions (<https://www.tamcmonterey.org/background>). Other sources include, but are not limited to: TAMC FORTAG project page (<https://www.tamcmonterey.org/fort-ord-regional-trail-greenway>); FORTAG proponents' website (<http://www.fortag.org/>). Consultant shall also review the FORTAG Master Agreements provided by TAMC to understand the importance of outreach and consensus building in achieving final design and alignment.

The following environmental review has been completed for this Project:

- TAMC approved the Final Environmental Impact Report on March 25, 2020 (Cooperative Agreement No. 05-0348). The report and appendices are available on the TAMC FORTAG project page noted above.
- CALTRANS approved the Categorical Exclusion on April 8, 2020 (Cooperative Agreement No. 05-0348).
- TAMC completed the Project Initiation Document on June 23, 2022.

#### Task 1.4 Field Review FORTAG alignment:

The consultant shall review the proposed FORTAG route alignment map and alternative segments and be prepared to go out into the field to walk the FORTAG Segment alignment. TAMC staff shall facilitate the field walk. City staff and other parties as determined by TAMC shall be invited to participate.

### Task 1.5 Implement EIR Mitigation Measures:

Design Submittal Review and Response to Comments shall utilize the Plans, Specifications and Estimates (PS&E) / Ready to List (RTL) Review Tool developed by Caltrans to review the 30%, 60%, 90%, and 100% design submittals to ensure all applicable measures from the EIR are included in the design documents. These measures include, but are not limited to, preconstruction surveys for sensitive species, nesting bird protection, environmental sensitive area fencing and protection of retained trees from construction disturbance. In addition, Subconsultant's Qualified SWPPP Developer/Practitioner (QSD/QSP) shall ensure design documents, such as Water Pollution Control Plans and the Storm Water Data Report, are consistent with the SWPPP. This shall include reviews of all relevant design components, such as Erosion and Sediment Control BMPs.

### Task 1.6 Agreements and Permits:

Consultant shall confer with State, Federal and local agencies, as appropriate, to determine the permits and permitting requirements required for the Project. Consultant shall assist in the preparation and submittal of all permits, including but not limited to the following permits and agreements:

- Maintenance Agreements - Prepare maps and/or exhibits showing areas of maintenance responsibility, review draft maintenance agreements and provide review comments.
- City of Marina Encroachment Permit - Prepare for TAMC review and submit application.
- University of California, Santa Cruz Encroachment Permit - Prepare application for TAMC signature.
- CSUMB Encroachment Permits – Prepare application for TAMC review and submit application.
- California Fish & Wildlife Permit.
- Regional Water Quality Control Board Permit.

## **Task 2: Land Surveying**

### Task 2.1 Review Available Survey Data:

The consultant shall obtain and review available data and identify any additional information necessary to complete the PS&E and right-of-way needs of the Project. The consultant shall provide additional topographical survey information including at minimum: topographic base maps, utility information, right-of-way information delineating parcels, topographical survey map data. The consultant shall provide written and graphic materials that describe the Project. The following information should be included in this assessment and surveys task:

- Property needs for accommodating the trail by jurisdiction.
- Survey needed to design overcrossing, retaining walls, ADA ramps and conforms.
- Improvements at intersections.
- Constraints analysis.
- Existing utility mapping.
- Survey of existing property ownership and status of ownership and status of ownership including fee title, easements, conditions of developments, etc.

Deliverables: Memorandum detailing the field assessments and surveys, including pictures and maps. Native JPG image files, GIS and AutoCAD files, Base Plans, PDF files, word files and excel files shall be submitted to TAMC.

### **Task 3: Engineering Design (PS&E)**

Consultant shall perform all work in accordance with Federal and State of California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and Caltrans standards.

#### Task 3.1 Plans, Specifications and Cost Estimate (PS&E):

The consultant shall prepare engineering design for the Project. Designs shall consider opportunities for innovative design and project area constraints. The Consultant shall refer to the project description and FORTAG Alignment Plans for specific project improvements to be designed. FORTAG Alignment Plans CAD files shall be used as the base for this work and will be made available to consultant. The consultant shall provide final design services, including complete PS&E (plans, specifications, and estimate) deliverables at 30%, 60%, 90%, and 100% design milestones.

The construction documents included in this task include:

- Construction Plans.
- Construction General Permit (CGP) documentation including a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) filing documents.
- Project Specifications and Special Provisions, including Federal requirements.
- Quantity Calculations.
- Engineer's Opinion of Probable Cost.

The Consultant shall write a complete set of technical specifications based on the latest Caltrans Standard Specifications. The Consultant shall develop a complete set of special provisions that adhere to and include all federal requirements. The following plan sheets are anticipated, but not limited to:

1. Title Sheet and Sheet Index
2. Key Map, Abbreviations and General Notes
3. Horizontal and Vertical Control
4. Typical Cross Sections
5. Layout Plans and Profiles
6. Construction Details
7. Temporary Water Pollution Control Plans
8. Erosion Control and Habitat Protection
9. Grading Plans
10. Drainage Plan, Profiles, Details (Including Minor Structures) and Quantities
11. Utility Facilities, including Relocations
12. Construction Area Signs
13. Stage Construction, Traffic Handling and Detour Construction Plans, Details and Quantities
14. Pavement Delineation Plans, Details and Quantities
15. Sign Plans, Details and Quantities
16. Retaining Wall Plans, Profiles, Details and Quantities
17. Traffic Signal Modification (California Avenue / Imjin Parkway)
18. Electrical Plans (Street, Trail, Intersection and Overcrossing Lighting, Irrigation Controls)
19. Temporary Traffic Control, including bicycles and pedestrians
20. Landscaping, Irrigation and Habitat Restoration Plans, Details and Quantities
21. Overcrossing Structure Plans, Profiles, Details and Quantities

Task 3.1.1 30% PS&E:

The Consultant shall prepare a 30% design that incorporates the approved plan and profile trail alignment on a topographic base plan with horizontal and vertical control, locations of walls and structures, existing utilities, right-of-way and property lines, and other significant features. Consultant shall provide TAMC and all Stakeholder Jurisdictions with a set of draft 30% project plans and cost estimates for review and comment.

Task 3.1.2 60% PS&E:

The Consultant shall prepare a 60% design that reflects the 30% plan set and stakeholder comments. Consultant shall provide TAMC and all Stakeholder Jurisdictions with a set of draft 60% project plans, specifications and cost estimate for review and comment. The 60% PS&E shall address issues such as materials specification, testing requirements, bid item list, and bid item measurement and payment.

Task 3.1.3 90% PS&E:

The Consultant shall prepare a 90% design that reflects the 60% plan set and the stakeholder jurisdiction comments. Consultant shall provide TAMC and all Stakeholder Jurisdictions with a set of draft 90% project plans, specifications and cost estimate for final review and comment.

Task 3.1.4 100% PS&E:

The Consultant shall prepare a 100% design that reflects the 90% plan set and the comments from TAMC and Stakeholder Jurisdictions based on that plan set. Consultant shall provide TAMC and Stakeholder Jurisdictions with a set of revised project specifications and cost estimate. Final Plans and specifications shall be signed and sealed by a California Registered Professional Engineer.

Task 3.2 Analysis and Reports:

This task includes preparation of technical reports to support the Project design.

Task 3.2.1 Geotechnical Design & Materials Report:

Consultant shall perform the geotechnical investigation based on Caltrans guidelines for preparation of Geotechnical Design and Materials Reports.

- 1 Research and Data Collection: Consultant shall review available geologic and soil reports and boring logs.
- 2 Permits / USA Clearances: Consultant shall prepare and obtain encroachment permits required by jurisdictions for borings within agencies jurisdictions, map of borings, and temporary traffic control plans. Consultant shall field locate borings and coordinate USA utility clearance.
- 3 Field Exploration: Consultant shall conduct borings and provide an evaluation of subsurface conditions for the proposed roadway and structures in the design. Consultant shall classify and continuously log subsurface soil conditions encountered in each test boring at the time of drilling and obtain "relatively undisturbed" and bulk

samples of substrata from test borings. The borings shall be drilled and capped in accordance with permit requirements.

- 4 Laboratory Testing: Perform laboratory tests on representative soil samples such as moisture density, unconfined compression, sieve/gradation analyses, R-value tests, corrosion tests and Plasticity Index tests.
- 5 Soils Analysis/Evaluation: Perform engineering analyses and develop design recommendations for the embankments, structures, and pavement design. Slope stability analyses shall be required to provide justification for the proposed 'steeper' slopes and design recommendations for retaining walls.
- 6 Prepare Draft Geotechnical Design and Materials Report: Prepare preliminary recommendations for pipe culverts, embankments, native soil acceptability as backfill, retaining wall, slope recommendations, structures, and pavement design. The report shall be prepared in accordance with Caltrans guidelines. Also specified in the report shall be information on groundwater conditions, corrosion evaluations, etc. Consultant shall provide TAMC and all Stakeholder Jurisdictions with a draft report for review and comment.
- 7 Prepare Final Geotechnical Design and Materials Report: Prepare final report that reflects the preliminary report and comments from TAMC and Stakeholder Jurisdictions. Consultant shall provide TAMC and Stakeholder Jurisdictions with a final Geotechnical Design and Materials Report. Final Report shall be signed and sealed by a California Registered Geotechnical Engineer.
- 8 Design Review Consultation through final design. Consultant shall assist TAMC during the project development and design review process and attend meetings.

#### Task 3.2.2 Preliminary Foundation Report:

Consultant shall prepare a Structure Geotechnical Report / Preliminary Foundation Report for the proposed Imjin Road Overcrossing structure. The report shall include potential geotechnical / geologic impacts and mitigations including, but not limited, to slope stability, geology, seismic impacts, erosion, and groundwater conditions for the proposed project.

#### Task 3.2.3 Structure Type Selection Report:

The Consultant shall prepare a structures type selection report and submit it to TAMC and Stakeholder Jurisdictions for review and approval.

#### Task 3.2.4 Drainage Report:

The Consultant shall review the available data and prepare design calculations to assess the capacity of the existing drainage systems in the vicinity of the Project. The Drainage Report shall include drainage mapping, an evaluation of the existing conditions, identification of unusual / special conditions, hydraulic analysis and design calculations of proposed systems.

#### Task 3.2.5 Stormwater Plans:

The consultant shall prepare a Storm Water Control Plan (SWCP) and all associated documentation, civil design calculations, and plans for the Project in accordance with applicable design requirements. Applicable design standards may include site planning/source control, water quality treatment, retention, and peak flow control and hydromodification. The consultant shall verify the limits of the Environmentally Sensitive Habitat Area and ensure that the ESHA is not disturbed. The Central Coast Regional Water Quality Control Board Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast publication may be found at:

[https://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/stormwater/docs/lid/hydromod\\_lid\\_docs/2013\\_0032\\_attach1\\_post\\_construction\\_requirements.pdf](https://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/hydromod_lid_docs/2013_0032_attach1_post_construction_requirements.pdf)

The consultant shall prepare the initial site-specific Stormwater Pollution Prevention Plan (SWPPP) in compliance with the Construction General Permit DWQ (CGP), as well as the new requirements for the Phase II Municipal General Permit (pending approval of the Draft Resolution R3-2013-0032). SWPPP preparation shall include conducting applicable research, review, and calculations, and developing applicable appendices and attachments. This work program shall be directed by a QSD and shall include submittal of an electronic copy of the SWPPP.

Consultant shall complete the risk level evaluation to provide documentation of the risk level assessment; and it is assumed that this project qualifies as a Risk Level II or I as specified in the current DWQ Construction General Permit. Preparation of the SWPPP document shall meet Caltrans requirements. Formal SWPPP amendments shall be completed as a separate task on a time and materials basis, if required, consultant shall upload the initial SWPPP and Notice of Intent (NOI) to the SMARTS database. However, subsequent SMARTS uploads and other SWPPP related documents and services, such as SWPPP amendments and Annual Reports, shall be the responsibility of the Contractor and Resident Engineer/Construction Manager.

Development of the SWPPP document and its components shall meet the current DWQ Construction General Permit guidelines. The construction contractor shall be responsible for SWPPP implementation.

Task 3.2.6 Caltrans Environmental Certification and Commitments Record:

Consultant shall conduct a review of the EIR at each design submittal to ensure the Project remains consistent with the project description, impacts, findings, and mitigation measures in the environmental document. TAMC assumes the Project will remain consistent with the EIR and no additional CEQA documentation will be required.

Task 3.2.7 Environmental Commitments Record (ECR):

Consultant shall prepare an Environmental Commitments Record (ECR) in accordance with Caltrans standards. The ECR shall contain all the relevant information needed to track progress of environmental commitments and identify actions needed to ensure environmental commitments are completed. The ECR shall act as a source document for preparing the Environmental Certification discussed below. The ECR shall also identify appropriate staff responsible for ensuring that each mitigation measure is done.

Task 3.2.8 Environmental Certification:

Consultant shall prepare the Environmental Certification in accordance with Caltrans standards. Before final design is considered complete and the project can be certified as Ready to List, an Environmental Certification must be completed. The Environmental Certification shall serve as documentation that the environmental document is appropriate for the Project and remains valid; all actions in the PS&E are covered in the environmental document or subsequent permits and approvals/agreements; all environmental commitments belonging in the PS&E have been included.

Task 3.2.9 Trail Lighting Design Analysis:

A lighting design analysis for the Project shall be performed with isolux diagrams to optimize safety lighting where the trail crosses streets and intersections, overpass lighting, tunnel approach lighting, and security lighting. The lighting analysis shall also evaluate minimizing light intrusion into habitat areas. Consultant shall submit analysis to TAMC and Stakeholder Jurisdictions for review and approval.

Task 3.2.10 Traffic Analysis, Imjin Parkway and California Avenue Intersection:

The Consultant shall collect intersection turning movement counts for AM, midday, and PM peak weekday periods. The Consultant shall revisit and revise the existing Synchro models based on the 35% design intersection geometry. Specific Measures of Effectiveness (MOEs)

including vehicle queuing, intersection delay and stops, queue jump operation, and impacts to level of service shall be determined.

Task 3.2.11 Landscape and Aesthetics Plan:

Consultant shall prepare a landscape and aesthetics plan with three concepts. Consultant shall present the concepts to TAMC and Stakeholder Jurisdictions for discussion and approval of the final landscape and aesthetic concept to be incorporated into the Project plans. The plan should include the following elements for each of the three concepts:

1. Landscape design with plant palettes, wall and structure treatments, hardscape palette, irrigation availability, and interpretative opportunities
2. Preliminary cost estimates for various elements
3. Illustrative sections and sketches
4. Stakeholder Jurisdiction input summary
5. Determination of approvals and agreements required by Stakeholder Jurisdictions
6. Final Landscape and Aesthetics Plan Exhibits

Task 3.3 Quality Assurance/Quality Control (QA/QC) Review:

Consultant shall assign a QA/QC officer that is independent of the design team to ensure and provide the Quality Assurance/Quality Control Review of internally generated documents and checklists. This shall also include independent review of all subconsultant generated reports and documents including but limited to:

1. Geotechnical Reports
2. Environmental Documents
3. Plats and Legal Descriptions
4. Structural

Task 3.4 Cost Estimates:

The Consultant shall prepare an itemized estimate of probable construction cost including right-of-way acquisition (if necessary), temporary construction easements, permanent easements (if necessary), utility relocations, construction, environmental mitigations, permits, inspection, testing and construction management with each submittal. Cost estimates should include an escalation factor to account for potential year of construction. The consultant shall document assumptions as part of the cost estimates.

Deliverables: Excel and Word files of cost estimates

**Task 3.5 Project Report:**

The consultant shall prepare a Project Report per Caltrans requirements.

**Task 4: RIGHT OF WAY:**

Right-of-Way includes coordination with utility owners for the protection, removal, or relocation of utilities and acquisition of easements; the acquisition of right-of-way interests and easements (if necessary); and post-construction work such as right-of-way monumentation/recordation, relinquishments/ vacations, and excess land transactions. The Right-of-Way component budget identifies the cost of the capital costs of right-of-way acquisition and the cost of the staff work in support of any acquisition. Under the supervision of TAMC, the consultant shall make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the Project or that violate Caltrans' encroachment policy.

**1 RW Documents:**

The consultant shall provide TAMC and stakeholder jurisdictions a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements for concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts shall be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities shall be completed prior to construction contract award and included in the project plans, specifications, and estimate.

**2 RW Engineering:**

The consultant shall provide a land surveyor licensed in the State of California to be responsible for land surveying and right-of-way engineering. All survey and right-of-way engineering documents shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

**3 RW Resolutions of Necessity:**

Although substantial acquisition of property is not anticipated, if deemed necessary by TAMC, Consultant shall prepare Resolutions of Necessity for TAMC and local agency adoption. If necessary, the consultant shall prepare materials for TAMC to conduct and document Condemnation Evaluation and Condemnation Panel Review meetings as required in accordance with Caltrans policy and guidance.

4 RW Acquisition:

If TAMC acquires any property to be incorporated into the trail right-of-way outside of Stakeholder Jurisdiction right-of-way, then TAMC shall acquire in its own name.

5 RW Certification:

The consultant shall utilize a properly licensed consultant for all right-of-way activities, under the review and supervision of TAMC. A qualified right-of-way agent shall administer all right-of-way consultant contracts. The consultant shall prepare right-of-way certification. TAMC shall submit a draft Right-of-Way Certification to Caltrans six weeks prior to the scheduled Right-of-Way Certification milestone date for review. TAMC shall submit a final Right-of-Way Certification to Caltrans for approval prior to the advertising the construction contract.

### **Task 5: Utility Coordination**

Consultant shall coordinate with utilities, including sending letters to area utilities, and performing field reconnaissance for all locations where the Project trail crosses a street. Consultant shall review record plans received from utilities and analyze utility data captured during topographic surveys to identify potential conflicts with the proposed improvements. Consultant shall work with TAMC and utility companies to determine the best strategy for dealing with utility conflicts. The Consultant shall include the utility information on the plans.

#### Task 5.1 PS&E Utility Conflict Maps:

The consultant shall prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the project. The consultant shall provide Caltrans a copy of Utility Conflict Maps for concurrence prior to issuing the Notices to Owner and executing the utility agreement. All utility conflicts shall be addressed in the Project plans, specifications, and estimate.

#### Task 5.2 PS&E Utility Relocation Cost:

The consultant shall determine the cost to positively identify and locate, accommodate, protect, relocate, or remove any utility facilities whether inside or outside the State Highway System right-of-way in accordance with federal and California laws and regulations, and Caltrans policies, procedures, standards, practices, and applicable agreements including Freeway Master Contracts.

## **Task 6: Community Outreach**

The Project trail alignment lies within the limits of the City of Marina running through open space and adjacent to California Avenue. The consultant shall lead an outreach and engagement campaign to target disadvantaged communities that would benefit from the proposed project by presenting to community-based organizations, school groups, and cultural organizations. The engagement shall include receiving feedback on proposed amenities, aesthetics, and educational programming. Collaboration with the local community shall help deliver a project that will be widely accepted and utilized. Safe Routes to Schools Steering Committees shall help inform the outreach and engagement methodology through monthly meetings.

### Task 6.1 Community and Stakeholder Meetings and Design Workshops:

The consultant shall develop an outreach plan to facilitate meaningful participation of Stakeholder Jurisdictions, and the community in the design process. This task includes small group meetings and design workshops focusing on the function and appearance of the trail setting through along California Avenue and through Fort Ord National Monument open space. Consultant shall prepare all meeting materials and facilitate outreach. Consultant shall prepare visual simulations to support design solutions. TAMC anticipates three rounds of meetings are anticipated as part of this task. The following stakeholders and community workshops are anticipated to be involved in the environmental review process:

- 1 TAMC Board and Committees (estimated 1-2 meetings at each of these): The consultant shall make presentations to the TAMC Board and the TAMC Bicycle and Pedestrian Committee to review and receive comments.
- 2 Stakeholder Jurisdictions (estimated 3 meetings at each of these): The consultant shall organize meetings and make presentations to and receive comments from the City of Marina.
- 3 Staff Level and Agency Partners Meetings (estimated 3-4 meetings with this group): Stakeholder Jurisdictions staff. The consultant shall also participate in one-on-one meetings to follow-up with staff on design issues.
- 4 Community Workshops (estimated 1-2 meetings in each of these locations): organize and sponsor workshops in Marina to review plan concepts with the public. Workshops are envisioned for each location at the beginning of the process to

enable interested citizens and agencies to present ideas and concerns and after consultant recommendations are released to enable public and agency review.

For all meetings and workshops, the consultant shall be responsible for preparing all materials and presenting information to those attending, and to TAMC staff, in web compatible formats. TAMC staff shall be responsible for scheduling the time, date, and location of each workshop, providing public notice, mailing agenda materials to TAMC contact lists, posting materials on the TAMC's web site, and providing a representative to each meeting. The consultant should list a cost per meeting in their proposal cost estimate to account for additional stakeholder follow-up meetings that may be necessary aside from those listed here.

**Task 6.2 Grant Support:**

Consultant shall provide TAMC with grant writing and technical analysis assistance for future grant applications. Technical analyses may be cost/benefit analysis or other technical analyses as required by different grant programs.

**Deliverables:** Community and stakeholder outreach plan; Meeting agendas and materials; Presentation graphics and simulations; Meeting minutes. The total estimated number of meetings is 20.

**Task 7: Design Support During Construction**

It is assumed that a contract shall be bid and awarded for construction of the Project after successful completion of work by Consultant. The Consultant shall provide Design Support During Construction (DSDC) as described in the following tasks through Project bidding, award and construction:

**Task 7.1 Design Support During Advertisement Period (Bid Support):**

The Consultant shall provide design support during Project construction bid advertisement by answering contractor inquiries and preparing addendums as requested by the TAMC.

**Task 7.2 Design Support During Construction:**

The Consultant shall provide design support during Project construction including, but not limited to, answering contractor inquiries, preparing design modifications, including specifications and costs, for construction contract change orders and related to CGP deliverables and SWPPP revisions for submittal to the SWRCB at various phases of construction.

Task 7.3 Construction Staking:

The consultant shall provide construction survey staking services. This may include attendance at construction coordination meetings as needed.

Task 7.4 Record Drawings:

Based on redline markups of the construction contract drawings provided by the contractor and resident engineer/construction manager, the Consultant shall prepare record drawings using AutoCAD that reflect the actual improvements constructed in the field. Completed cad files and pdf files shall be submitted to TAMC and Stakeholder Jurisdictions.

**ATTACHMENT B**  
**SAMPLE TAMC STANDARD AGREEMENT**

**TRANSPORTATION AGENCY FOR MONTEREY COUNTY**  
**AND [REDACTED]**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**RELATED TO FORT ORD REGIONAL TRAIL AND GREENWAY (FORTAG)**  
**CALIFORNIA AVENUE SEGMENT**  
**FINAL DESIGN AND RIGHT OF WAY**  
APPROVED BY THE TAMC BOARD ON: MARCH 22, 2023

This is an agreement between the Transportation Agency for Monterey County, hereinafter called "TAMC," and [Consultant's Name], a [indicate legal status of entity, e.g., a California corporation, an individual dba . . . , a California partnership], [Consultant's address], hereinafter called "Consultant".

The parties agree as follows:

1. Term of Agreement. The term of this Agreement shall begin upon June 28, 2023, contingent upon approval by the TAMC Board, and Consultant shall commence work only after a Notice to Proceed has been issued by TAMC's Project Manager specified in Paragraph 35. Unless earlier terminated as provided herein, this Agreement shall remain in force until June 30, 2025. Consultant acknowledges that this Agreement is not binding until it is fully executed and approved by TAMC.
2. Payments to Consultant; maximum liability. Subject to the limitations set forth herein, TAMC shall pay to Consultant the amounts provided in Exhibit B: Budget, upon receipt and acceptance of deliverables listed therein. Each payment by TAMC shall be for a specific deliverable or services outlined in Exhibit A: Scope of Work and Schedule. The maximum amount payable to the Consultant under this Agreement is set forth in Exhibit B: Budget and shall not exceed the amount of [REDACTED] Dollars (\$XXXX). If there is any conflict between the terms of this Agreement and the terms of either Exhibit A (Scope of Work and Schedule) or Exhibit B (Budget), the terms of this Agreement shall prevail. TAMC does not guarantee any minimum amount of dollars to be spent under this Agreement.
3. Employment of Consultant. TAMC hereby engages Consultant and Consultant hereby agrees to perform the services set forth in Exhibit A: Scope of Work and Schedule, in conformity with the terms of this Agreement. Consultant will complete all work in accordance with the work schedule set forth in Exhibit A: Scope of Work and Schedule.

(a) The project title for this work is as follows:

FORTAG – California Avenue Segment – Final Design and Right of Way

(b) Consultant represents that Consultant and its agents, subconsultants and employees performing work hereunder are specially trained, experienced, competent, and

appropriately licensed to perform the work and deliver the services required by this Agreement.

- (c) Consultant, its agents, subconsultants, and employees, shall perform all work in a safe, skillful, and professional manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements. Consultant shall ensure for itself and for any subconsultants under this Agreement that the applicable requirements of Labor Code Section 1725.5, concerning the registration of contractors for public works, shall be in force and maintained for the term of this Agreement.
- (d) Consultant shall furnish, at its own expense, all materials and equipment necessary to carry out the terms of this Agreement, except as otherwise provided herein. Consultant shall not use TAMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations hereunder.
- (e) Consultant's project manager shall be specified in Exhibit A. If Consultant desires to change the project manager, Consultant shall get written approval from the TAMC Executive Director of the new project manager.
- (f) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the TAMC Project Manager: to determine if Consultant is performing to expectations and if the work is on schedule; to communicate interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- (g) Consultant's Project Manager shall meet with TAMC's Project Manager, as needed, to discuss progress on the contract.

4. Payment Provisions and Allowable Costs:

- (a) The following Standard Payment Provisions apply to all contracts, regardless of the Method of Payment specified in Paragraph (b):
  - i. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

- ii. Reimbursement for travel costs, if eligible under the Method of Payment as specified below, shall not exceed the Short-Term Travel Lodging Rates and Requirements listed on the Caltrans website, according to the Code of Regulations (CCR), Administrative Code, Title 2.
- iii. When milestone or task-by-task cost estimates are included in the Budget, Consultant shall seek approval from the TAMC Project Manager prior to any adjustment to compensation across work tasks. If TAMC determines that a change to the Scope of Work and Schedule is required, such changes shall be approved and documented in writing by the TAMC Project Manager.
- iv. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. If Consultant fails to submit the required deliverable items according to the schedule set forth in Exhibit A: Scope of Work and Schedule (or task order, as applicable), TAMC shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Paragraph 6, Termination.
- v. Invoices shall be mailed to TAMC's Finance Officer, specified in Paragraph 35, at the address contained in Paragraph 36 (Notices). 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 or task. Invoices shall follow the format stipulated in Exhibit B: Budget and the Invoice Cover Sheet Format attached hereto as Exhibit C and shall reference this Agreement's project title as specified in Section 3, and the Task Order title, if applicable. Consultant will be reimbursed as promptly as fiscal procedures will permit, upon receipt by TAMC's Finance Officer of itemized invoices.
- vi. The final invoice must contain the final cost and all credits due TAMC including any equipment purchased under the provisions of Paragraph 27 (Equipment Purchase) of this Agreement and shall be submitted within 60 calendar days after completion of Consultant's work under this agreement, or a given Task Order, as applicable.
- vii. No additional compensation will be paid to Consultant unless there is a change in the scope of the work. Changes in the scope of work that do not increase compensation may be approved by the TAMC Project Manager. Changes in the scope of work that would increase compensation must be authorized by an amendment to this Agreement approved by the TAMC Board of Directors.
- viii. Salary increases will be reimbursable only for Actual Cost Plus Fixed Fee or Rates of Compensation contracts and only if the increase is specified in Exhibit B: Budget. For

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

- ix. The total amount payable by TAMC resulting from this Agreement shall not exceed the amount specified in Section 2 of this Agreement.
- x. All subcontracts in excess of \$25,000 shall contain the above provisions.

(b) Method of Payment: The method of payment for this Agreement will be based on.

Actual Cost Plus a Fixed Fee provisions:

- i. TAMC will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, equipment rental, overhead, and other estimated costs set forth in Exhibit B: Budget.
- ii. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds the approved overhead rate set forth in Exhibit B.
  - a. In addition to the allowable incurred costs, TAMC will pay Consultant a fixed fee as specified in Exhibit B: Budget. The fixed fee is nonadjustable for the term of the Agreement, unless such adjustment is made by written amendment of this Agreement.

5. Retention of Funds.

- (a) No Retainage by TAMC or Consultant: No retainage will be withheld by TAMC from progress payments due Consultant. Retainage by Consultant or subconsultants is prohibited, and no retainage will be held by Consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 3321 of the CCC. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This

provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE consultants and subconsultants.

- (b) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

6. Termination.

- (a) TAMC reserves the right to terminate this Agreement upon thirty (30) calendar days' written notice to Consultant with the reasons for termination stated in the notice.

- (b) TAMC may also terminate this Agreement at any time for good cause effective immediately upon written notice to Consultant. "Good cause" includes, without limitation, the failure of Consultant to perform the required services at the time and in the manner provided herein, as well as failure to comply with the provisions of Paragraphs 13 and 14, relating to audits, below. Notwithstanding TAMC's right to terminate for good cause effective immediately upon written notice thereof, TAMC shall provide prior notice to Consultant of any ground for termination then being considered, and also provide Consultant with a good faith opportunity to avoid termination, as reasonably determined by TAMC in its absolute discretion. If TAMC terminates this Agreement for good cause, TAMC may be relieved of the payment of any consideration to Consultant, and TAMC may proceed with the work in any manner, which it deems proper. Costs incurred by TAMC thereby shall be deducted from any sum otherwise due Consultant.

- (c) The maximum amount for which TAMC shall be liable if this Agreement is terminated is zero (0) dollars.

- (d) It is also mutually understood between TAMC and Consultant 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. This Agreement is valid and enforceable only if sufficient funds are made available to TAMC for the purpose of this Agreement. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds. TAMC retains the right to direct Consultant immediately to stop work and to terminate this Agreement for convenience, pursuant to Paragraph 6(a) above, in order to address any reduction of funds.

- (e) Termination of this Agreement shall not terminate Consultant's duty to defend, indemnify and hold harmless TAMC, as provided in Paragraphs 8 and 20.

7. Cost Principles and Administrative Requirements.

- (a) Consultant agrees that the contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR), Chapter 1, Part 31.000 *et seq.*, Federal Acquisition Regulations System, shall be used to determine the cost allowability of individual items.
- (b) Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Costs Principles and Audit Requirements.
- (c) Any costs for which payment has been made to Consultant under this Agreement that are determined by subsequent audit to be unallowable under 2 CFR Part 200 are subject to repayment by Consultant to TAMC.
- (d) Consultants and subconsultants shall maintain accounting systems related to the work to be performed pursuant to this Agreement that conform to Generally Accepted Accounting Principles (GAAP).
- (e) All subcontracts in excess of \$25,000 shall contain the above provisions.

8. Indemnification. [Select one: if A&E contract, use Design Indemnification Services language]

- (a) For the purposes of the following indemnification provisions (“Indemnification Provisions”), “design professional” has the same meaning as set forth in California Civil Code Section 2782.8. If any term, provision or application of these Indemnification Provisions is found to be invalid, in violation of public policy, or unenforceable to any extent, such finding shall not invalidate any other term or provision of these Indemnification Provisions, and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of these Indemnification Provisions and the provisions of California Civil Code Sections 2782 and 2782.8, the broadest indemnity protection for TAMC under these Indemnification Provisions that is permitted by law shall be provided by Consultant.
- (b) Indemnification for Design Professional Services Claims: Consultant shall indemnify, defend, and hold harmless TAMC, its governing board, officers, agents, and employees, from and against any all claims that arise out of, or pertain to, or related to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence, or willful misconduct of TAMC, or defect in a design furnished by TAMC, but in no event shall the amount of such Consultant’s liability exceed such Consultant’s proportionate percentage of fault as determined by a court, arbitrator or

mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against TAMC is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such Consultant shall meet and confer with the other parties to such action regarding unpaid defense costs.

- (c) Indemnification for All Other Claims or Loss: For any claims, losses, costs, damages, injuries, other than claims arising out of Consultant's performance of design professional services under this Agreement, Consultant shall defend (with legal counsel reasonably acceptable to TAMC), indemnify and hold harmless TAMC, its governing board, officers, agents, and employees, from and against any claims, losses, costs, damages, injuries (including injury to or death of an employee of Consultant or its subconsultants), expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify TAMC, its officers, agents, and employees, shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of TAMC, or a defect in a design furnished by TAMC. To the extent there is an obligation to indemnify under this sub-paragraph 8(c), Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct.
- (d) Notwithstanding any other provision of this Agreement, Consultant's obligation to defend, indemnify and hold harmless TAMC as expressed in these Indemnification Provisions shall survive the termination or expiration of the Agreement for a term to include the applicable statute of limitations related to the Consultant's performance pursuant to the Agreement.

## 9. Insurance.

- (a) Without limiting Consultant's duty to indemnify as set forth in this Agreement, Consultant shall maintain, at no additional cost to TAMC, throughout the term of this Agreement a policy or policies of insurance with the following coverage and minimum limits of liability:
- ✓ Commercial general liability insurance, including but not limited to premises, personal injury, products, and completed operations, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.
  - ✓ Professional liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, to cover

liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims made" basis rather than an "occurrence" basis, Consultant shall, upon the expiration or termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the surviving term of Consultant's obligation to defend, indemnify and hold harmless TAMC as set for in Paragraph 8.

- ✓ Comprehensive automobile insurance covering all motor vehicles, including owned, leased, hired and non-owned vehicles used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

(b) All insurance required under this Agreement shall be with a company acceptable to TAMC and authorized by law to transact insurance business in the State of California. Unless otherwise provided in this Agreement, all such insurance shall be written on an occurrence basis; or, if any policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of two years following the date of Consultant's completion of performance hereunder.

(c) Each policy of insurance required under this Agreement shall provide that TAMC shall be given written notice at least thirty days in advance of any change, cancellation or non-renewal thereof. Each policy shall provide identical coverage for each subconsultant performing work under this Agreement or be accompanied by a certificate of insurance for each subconsultant showing identical insurance coverage.

(d) Commercial general liability and automobile liability policies shall provide an endorsement naming TAMC, its officers, agents, and employees, as additional insureds and shall further provide that such insurance is primary to any insurance or self-insurance maintained by TAMC, and that no insurance of any additional insured shall be called upon to contribute to a loss covered by Consultant's insurance.

(e) TAMC shall not be responsible for any premiums or assessments on the policy.

10. Workers' Compensation Insurance. If during the performance of this Agreement, Consultant employs one or more employees, then Consultant shall maintain a workers' compensation plan covering all of its employees as required by Labor Code Section 3700, either (a) through workers' compensation insurance issued by an insurance company, with coverage meeting the statutory limits and with a minimum of One Million Dollars (\$1,000,000) per occurrence for employer's liability, or (b) through a plan of self-insurance certified by the State Director of Industrial Relations, with equivalent coverage. If Consultant elects to be self-insured, the certificate of insurance

otherwise required by this Agreement shall be replaced with consent to self-insure issued by the State Director of Industrial Relations. The provisions of this paragraph apply to any subconsultant employing one or more employees, and Consultant shall be responsible for all subconsultants' compliance herewith.

11. Safety Provisions.

- (a) Consultant shall comply with Division of Occupational Safety and Health (CAL-OSHA) regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by TAMC Safety Officer and other TAMC representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on a construction project site.
- (b) If applicable to work to be performed by Consultant identified in the Scope of Work (Exhibit A), and pursuant to the authority contained in Section 591 of the Vehicle Code, TAMC has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- (c) Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Section.
- (d) Consultant must have a CAL-OSHA permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

12. Certificate of Insurance and Taxpayer Identification. Prior to the execution of this Agreement by TAMC, Consultant shall submit a completed federal W-9 form, Request for Taxpayer Identification Number and Certification, and file certificates of insurance with TAMC's Finance Officer evidencing that Consultant has in effect the insurance required by this Agreement. Consultant shall file a new or amended certificate promptly after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify any indemnification provision of this Agreement.

13. Retention of Records/Audit.

- (a) 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, subconsultants, and TAMC 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, TAMC, Federal Highway Administration (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 Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

(b) Subcontracts in excess of \$25,000 shall contain this provision.

#### 14. Audit Review Procedures.

- (a) 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 TAMC'S Finance Officer.
- (b) Not later than 30 days after issuance of the final audit report, Consultant may request a review by TAMC'S Finance Officer of unresolved audit issues. The request for review will be submitted in writing.
- (c) Neither the pendency of a dispute nor its consideration by TAMC will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.
- (d) Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by TAMC project manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by TAMC 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 Agreement and disallowance of prior reimbursed costs.

15. Inspection of Work. Consultant and any subconsultant shall permit TAMC, 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.
16. Confidentiality; Return of Records. Consultant and its officers, employees, agents, and subconsultants shall comply with all federal, State and local laws providing for the confidentiality of records and other information. Consultant shall not disclose any confidential information received from TAMC or prepared in connection with the performance of this Agreement without the express permission of TAMC. Consultant shall promptly transmit to TAMC all requests for disclosure of any such confidential information. Consultant shall not use any confidential information gained through the performance of this Agreement except for the purpose of carrying out Consultant's obligations hereunder. When this Agreement expires or terminates, Consultant shall return to TAMC all records, which Consultant utilized or received from TAMC to perform services under this Agreement.
17. Amendments and Modifications. No modification or amendment of this Agreement shall be valid unless it is set forth in writing and executed by the parties hereto.
18. Statement of Compliance/Non-Discrimination.
  - (a) Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
  - (b) During the performance of this Agreement, 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 Agreement 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.

19. Harassment. TAMC maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a TAMC employee's work performance or creates an intimidating, hostile or offensive work environment.
20. ADA Access. TAMC is committed to accessibility, including California State Web Content Accessibility Guidelines and Federal law and regulations related to the Americans with Disabilities Act. Consultant shall review and follow TAMC's adopted ADA Best Practices for Documents and Outreach with regard to conducting public outreach, developing outreach materials, and producing public documents and content for TAMC and its website.
21. Independent Contractor. In its performance under this Agreement, Consultant is at all times acting and performing as an independent contractor and not as an employee of TAMC or any of its member jurisdictions. No offer or obligation of employment is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive any form of benefits accorded to employees including without limitation leave time, health insurance, workers' compensation coverage, disability benefits, and retirement contributions. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including without limitation federal and State income taxes and social security arising out of Consultant's performance of this Agreement. In connection therewith, Consultant shall defend, indemnify, and hold harmless TAMC from any and all liability, which TAMC may incur because of Consultant's failure to make such payments.
22. Delegation of Duties; Subcontracting.
  - (a) Nothing contained in this Agreement or otherwise, shall create any contractual relation between TAMC and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to TAMC 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 TAMC'S obligation to make payments to the Consultant.

- (b) Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by TAMC'S Executive Director, except that, which is expressly identified in the approved Budget/Cost Proposal.
- (c) 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 subconsultants.
- (d) Any substitution of subconsultant(s) must be approved in writing by TAMC'S Executive Director prior to the start of work by the subconsultant(s).
- (e) Any work performed by a subconsultant shall be done in conformance with this Agreement, and TAMC shall pay Consultant for the work but not for any markup, including subcontract management, supervisions, administrative and other expenses, or reimbursable costs.

### 23. Ownership of Data.

- (a) 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 TAMC; and no further agreement will be necessary to transfer ownership to TAMC. Consultant shall furnish TAMC all necessary copies of data needed to complete the review and approval process.
- (b) It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the connection with the project for which this Agreement has been entered into.
- (c) Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by TAMC 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 TAMC 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.
- (d) Applicable patent rights provisions regarding rights to inventions shall be included in the Agreements as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

- (e) TAMC may permit copywriting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the data, and may authorize others to use the work for government purposes.
- (f) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

24. Confidentiality of Data.

- (a) All financial, statistical, personal, technical, or other data and information relative to TAMC's operations, which are designated confidential by TAMC and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.
- (b) Permission to disclose information on one occasion, or public hearing held by TAMC relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- (c) Consultant shall not comment publicly to the press or any other media regarding the Agreement or TAMC's actions on the same, except to TAMC's staff, Consultant's own personnel involved in the performance of this Agreement, and at public hearings or in response to questions from a Legislative committee.
- (d) Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by TAMC, and receipt of TAMC'S written permission.
- (e) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

25. Compliance with Terms of Federal or State Grant. If any part of this Agreement has been or will be funded pursuant to a grant from the federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant's work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.

26. Use of United States –flag Vessels. If this Agreement relates to a federally funded construction contract, the Consultant agrees:

- (a) To utilize privately owned United State-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) of this section to both the TAMC Project Manager (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

27. Prevailing Wages.

- (a) Consultant shall comply with all prevailing wage requirements, including California Labor Code Section 1770, et seq., and any Federal or local laws or ordinances, that may be applicable to the work to be performed pursuant to this Agreement.
- (b) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works, shall contain all the provisions of this Paragraph 26.
- (c) When prevailing wages may 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 found on the DIR website.

28. Equipment, Supplies or Consultant Services Purchases.

- (a) Prior authorization in writing by TAMC's Project Manager shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars (\$5,000) for supplies, equipment, or unbudgeted Consultant services. Consultant shall provide an evaluation of desirability of incurring such costs.
- (b) For purchase of any items, service or consulting work not covered in Consultant's Cost Proposal and exceeding Five Thousand Dollars (\$5,000), prior authorization is required by

TAMC's Project Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

- (c) Any equipment purchased as a result of this Agreement is subject to the following:
- i. 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 Five Thousand Dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, TAMC shall receive a proper refund or credit for such equipment at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit TAMC 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 TAMC procedures for such sales and then credit TAMC in an amount equal to that 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 and appraiser mutually acceptable to TAMC and Consultant; if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by TAMC.
  - ii. Consultant acknowledges that, if federal funds are used in this Agreement, 49 CFR, Part 1201 requires a credit to Federal funds when participating equipment with a fair market value greater than Five Thousand Dollars (\$5,000) is credited to the project for which this Agreement was entered into.
- (d) Consultant shall include these provisions into any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000).

## 29. Conflict of Interest.

- (a) Consultant shall disclose any financial, business, or other relationship with TAMC that may have an impact upon the outcome of this Agreement, or any ensuing TAMC construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing TAMC construction project, which will follow.
- (b) Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- (c) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

30. Governing Laws. This Agreement shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Monterey shall be the proper venue for any dispute arising hereunder.
31. Construction of Agreement. The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any exhibit or amendment. To that end, it is understood and agreed that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654. Section and paragraph headings appearing herein are for convenience only and shall not be used to interpret the terms of this Agreement.
32. Waiver. Any waiver of any term or condition hereof must be in writing. No such waiver shall be construed as a waiver of any other term or condition herein.
33. Successors and Assigns. This Agreement and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and heirs.
34. Time is of the Essence. The parties mutually acknowledge and agree that time is of the essence with respect to every provision hereof in which time is an element. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act, nor shall any such extension create a precedent for any further or future extension.
35. Contract Administrators. Consultant's designated principal responsible for administering Consultant's work under this Agreement shall be listed in Exhibit A; TAMC's designated administrator of this Agreement shall be Todd A. Muck, Executive Director. TAMC's Project Manager under this Agreement shall be Janneke Strause, and TAMC's Finance Officer shall be Dave Delfino.
36. Notices. Notices required under this Agreement shall be delivered personally or by electronic facsimile, e-mail, or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery, facsimile transmission, or email-receipt, or on the third day after deposit with the U.S. Postal Service. Consultant shall give TAMC prompt notice of any change of address. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

To TAMC:  
Executive Director

Todd A. Muck

To [Consultant]:



consideration, either promised or paid to any TAMC employee. TAMC shall have the right, in its sole and absolute discretion to do any of the following for breach or violation of this warranty: to terminate the Agreement without liability; to pay for the value of the work actually performed; or to deduct from the compensation to be paid under this Agreement (or otherwise recover) the full amount of any such rebate, kickback or unlawful consideration.

41. Prohibition of Expending Local Agency, State or Federal Funds for Lobbying.

(a) Consultant certifies to the best of his, her or its knowledge and belief that:

- i. 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 State Legislature or United States Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any State or Federal contract; in connection with the making of any State or Federal grant; in connection with the making of any State or Federal loan; in connection with the entering into of any cooperative agreement, and in connection with the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan or cooperative agreement.
- ii. 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 contract, grant, loan or cooperative agreement, then Consultant shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Consultant acknowledges that any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$100,000) for such failure.

(c) By signing this Agreement, Consultant also agrees that Consultant will require that the language of this certification will be included in all lower-tier subcontracts which exceed One Hundred Thousand Dollars (\$100,000), and that all recipients of such subcontracts shall certify and disclose accordingly.

42. Exhibits. The following Exhibits are attached hereto and incorporated by reference:

- Exhibit A – Scope of Work and Schedule
- Exhibit B – Budget
- Exhibit C – Invoice Cover Sheet Format
- Exhibit D – ADA Best Practices for Documents and Outreach
- Exhibit E –Title VI Exhibit for Federal Contracts

43. Entire Agreement. This document, including all exhibits hereto, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral negotiations and representations between the parties concerning all matters relating to the subject of this Agreement.

IN WITNESS WHEREOF, TAMC and Consultant execute this agreement as follows:

TAMC

[CONSULTANT]

By: \_\_\_\_\_  
Todd A. Muck  
Executive Director

By: \_\_\_\_\_  
Name  
Title

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

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

By: \_\_\_\_\_  
Name  
Title

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

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

INSTRUCTIONS: If Consultant is a corporation (including limited liability and nonprofit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If Consultant is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If Consultant is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

\*\*\*\*\*

Approved as to form:

\_\_\_\_\_  
TAMC Counsel

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

For TAMC internal use:

Work Element number to be used for the contract: \_\_\_\_\_

## **EXHIBIT A: Scope of Work and Schedule**

**Project Title:**

**Consultant Project Manager:**

**Scope of Work**

(by task, including Deliverables)

**Project Schedule**

**EXHIBIT B: Budget**

**EXHIBIT C: Invoice Cover Page Format**

[Project Title]

[Consultant Firm Name]

**Invoice #**

---

**Invoice Date**

---

**Invoice Period**

---

Task #	Task Name	Task Budget	Previously billed	Current invoice	Remaining Funds	% billed to-date	% Task Complete	Work performed this period
1								
2								
3								
4								
	TOTAL							

## Exhibit D: ADA Best Practices for Documents and Outreach

The following are best practices that TAMC commits to complying with, and asks that all final and public draft documents comply, as they align with best practices for web-content accessibility:

### Public Outreach Guidance

- Offer alternative ways to engage in outreach for the hard-of-hearing and the blind
  - Example: Have Talk-to-Text capacity available to engage with the hard of hearing
- Ensure public meeting rooms are set up in a way that is wheelchair accessible
- Ensure an alternative to a podium or stage is available in the event an individual cannot participate that way
- Have at least one wireless microphone available to help ensure public comments are projected in the meeting
- Develop public workshop handouts in font size 14 (minimum)
  - Handouts could include a project summary sheet, survey, comment card, etc.

### Developing ADA Accessible Documents

- Use Calibri, Helvetica, or Arial Font Type
- Ensure final document content is at least font size 12 (minimum)
- Utilize proper features in Microsoft Word, including, but not limited to:
  - Alt Text for Images and Tables
  - “Styles” Feature to add emphasis or titles
  - Built in “Spacing” feature
- Indicate at the bottom of a Final Document’s Title Page, an ADA Notice stating:
  - **ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (831) 775-0903 or email [ada@tamcmonterey.org](mailto:ada@tamcmonterey.org).

### Web Content Accessibility Guidelines

The Web Content Accessibility Guidance (WCAG) was integrated into Section 508 of the American with Disabilities Act in January 2018 as the industry standard in accessibility.

Guidance and Success Criteria from the WCAG are organized into the following four principles:

1. Perceivable
  - Provide text alternatives for non-text content.
  - Provide captions and other alternatives for multimedia.

- Create content that can be presented in different ways, including by assistive technologies, without losing meaning.
  - Make it easier for users to see and hear content.
2. Operable
    - Make all functionality available from a keyboard.
    - Give users enough time to read and use content.
    - Do not use content that causes seizures.
    - Help users navigate and find content.
  3. Understandable
    - Make text readable and understandable.
    - Make content appear and operate in predictable ways
    - Help users avoid and correct mistakes.
  4. Robust
    - Maximize compatibility with current and future user tools

*A few key aspects that relate to content to be posted onto the TAMC website include:*

- Integrating alternative text for images and maps
- Using distinguishable colors and design techniques that are comprehensible for the color-blind

For a complete list of WCAG's Guidance, see: <https://www.w3.org/TR/WCAG20/>

If Consultant or subconsultant needs clarification on an ADA best practices, please contact [ada@tamcmonterey.org](mailto:ada@tamcmonterey.org).

## Exhibit E: Title VI Exhibit for Federal Contracts

(US DOT Order 1050.2A)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:








Pertinent Nondiscrimination Authorities:

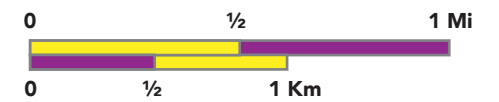
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/title-vi/appendix-e-of-the-title-v-i-assurances.pdf>

# FORTAG Segment 3 Project Location

-  Proposed Class 1 Segment California Ave. Bike Path
-  Sidewalk Upgrades
-  Funded Proposed Class 1 - FORTAG, FLAP
-  Funded Proposed Boardwalk - FLAP
-  Proposed Class 1 - FORTAG, non-FLAP
-  Jerry Smith Access Corridor
-  Existing Class 1 (8+ feet)



APPROXIMATE SCALE OF MAP

