



REQUEST FOR PROPOSALS

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

**FORT ORD REGIONAL TRAIL AND GREENWAY (FORTAG)
CANYON DEL REY/SR 218 SEGMENT
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, Stefania Castillo, stefania@tamcmonterey.org by **12:00 noon Pacific Standard Time on Thursday, August 27, 2020.**

The Request for Proposals and supplemental information, if any, are available on the TAMC website (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: June 25, 2020

TO: Interested Consultants

FROM: Debra L. Hale, Executive Director

SUBJECT: FORTAG – Canyon Del Rey/SR 218 Segment – 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 stefania@tamcmonterey.org by **12:00 noon PST on Thursday, August 27, 2020**. 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:

Stefania Castillo
Project Manager
55B Plaza Circle, Salinas, CA 93901
stefania@tamcmonterey.org

Email inquiries, including the submittal of the Proposal, relating to this Request for Proposals should include “FORTAG –Canyon Del Rey/SR 218 Segment – 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 six 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 Phase 1 of the Canyon Del Rey/SR218 segment of the Fort Ord Regional Trail and Greenway (FORTAG). The design and right-of-way will be reviewed and approved by Caltrans, TAMC, the cities of Seaside and Del Rey Oaks, and the Monterey Peninsula Regional Park District.

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 template agreement anticipated to be used by TAMC is Attachment B. 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 \$1,967,00 for design and \$1,198,000 for right-of-way. There is no federal funding on this project.

PROJECT SCHEDULE

This project is anticipated to take approximately 3 years to complete, starting in October 2020 and being completed by May 2022.

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 any and 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	<u>Firm Profile & Project Team:</u> 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	<u>Relevant Project Experience:</u> Has the firm demonstrated the ability to successfully provide services for projects of a similar complexity, including demonstrated experience with innovative engineering design and greenway projects, Caltrans PS&E, undercrossing design, Caltrans right-of-way acquisition and certification, utility relocation, land surveying, and community outreach during design process? Is the firm familiar with the former Fort Ord habitat and related environmental issues?	30 points
3	<u>Specific Approach:</u> 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? How will key personnel explain technical information to a non-technical audience for public outreach? Has the firm described its ability to achieve specified project delivery goals? Has the firm considered alternative concepts to achieve the desired goals?	40 points
4	<u>References:</u> 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). 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 Friday, August 14, 2020**, 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).

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

Date/ Timeframe	Task
June 25, 2020	Distribute RFP
August 14, 2020	Deadline for questions and/or requests for clarification or exceptions by 12:00 pm noon PST
August 27, 2020	Proposals due by 12:00 pm noon PST
Aug 31 – Sept 11, 2020	Review and rank proposals
Sept 21 – 25, 2020	Hold interviews (if necessary)
September 30, 2020	Determine top ranked consultant, send Tentative Award letter, negotiate contract
October 28, 2020	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 Proposal), 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, Stefania Castillo at stefania@tamcmonterey.org

Attachments:

- A. Scope of Work
- B. Sample TAMC Standard Agreement for Professional Services
- C. Sample Invoice Cover Page Format
- D. Canyon Del Rey/SR 218 Segment - Project Map

ATTACHMENT A

SCOPE OF WORK

Fort Ord Regional Trail & Greenway (FORTAG)

SR 218 Canyon Del Rey 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, 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 to fund and construct the entire trail over time.

This Request for Proposals seeks qualified consultants to perform engineering design and right-of-way services for the first phase of the Del Rey Oaks/SR 218 Segment of the trail (“the Project” for purposes of this RFP). As described in the Final Environmental Impact Report, this Project will extend 1.5 miles along the south side of the SR218 (Canyon Del Rey Boulevard) corridor beginning at the intersection of SR 218 Canyon Del Rey / North Fremont Street in the City of Seaside, traveling east and connecting Work Park and Del Rey Park through the City of Del Rey Oaks. The trail continues east around Del Rey Park, constructs an undercrossing at SR 218 / Canyon Del Rey Blvd., travels under SR 218 / Canyon Del Rey Blvd. into the southwest corner of the Monterey Peninsula Regional Park District’s Frog Pond Wetland Preserve on the north side of SR 218. From the north side of the new undercrossing, the trail will switch back up to the grade on the north side of SR 218 increasing in elevation by approximately 25’, while conforming to ADA standards, and continue west to Carlton Drive. From the intersection of SR 218 and Carlton Drive, the trail will travel north on the west side of Carlton Drive at sidewalk grade to Plumas Avenue in the City of Seaside, turning west, and meandering through the PG&E easement along the south

side of Plumas Avenue to Noche Buena Street, where the trail terminates at Del Rey Woods Elementary on the northwest corner of Plumas / Noche Buena Street.

FORTAG is a grassroots project that has achieved a number of 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.

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 FORTAG. The FORATG trail alignment runs through parks and open space that the community highly values. For this reason, the design process will 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 land surveying, engineering design PS&E, right-of-way, utility relocation, community and stakeholder engagement, bidding support, and grant application support. The design, final alignment, and right-of-way will be reviewed and approved by Caltrans, Transportation Agency for Monterey County, the Cities of Seaside and Del Rey Oaks, and Monterey Peninsula Regional Parks District.

Schedule

The Consultant shall develop a schedule with work with the following deadlines:

Begin Design October 2020

Right-of Way Certification June 2021

Construction Award May 2022

Stakeholder Jurisdictions

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

- Caltrans
- City of Seaside
- City of Del Rey Oaks
- Monterey Peninsula Regional Park District

Scope of Work

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

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

The consultant may propose a reorganization or consolidation of these tasks. However, all required and optional tasks must be included in the proposal.

Task 1: Project Management

Task 1.1 Project Management - Consultant will serve as overall Project Manager during the entire duration of the Project for the preparation of environmental approvals, and 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 project status meetings
- Provide coordination with other agencies

- Manage subconsultants
- Oversee all the project components listed in this Work Plan
- 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 1.3 Progress Meetings - Consultant will provide meeting coordination and oversight. At the outset of this Project, an initiation meeting will be scheduled to establish the project team; review the scope of work and the project schedule; and establish roles and lines of communications. Consultant will include twenty-four (24) meetings at TAMC offices (appropriate subconsultants in attendance at up to ten (10) meetings - *and where possible by teleconference to save cost*) and eight (8) meetings in Caltrans District 5 offices in San Luis Obispo. In addition to the face-to-face meetings, teleconferences and net-meetings will be conducted, as necessary. Consultant shall prepare agendas and meeting minutes highlighting decisions made and action items.

Task 1.4 Review of Existing Documents and Environmental Impact Report - Consultant will review the goals and objectives of the Fort Ord Regional Trail & Greenway project, as described in TAMC's Measure X Projects and Policies (<http://www.tamcmonterey.org/measure-x/>). Other sources include, but are not limited to: TAMC FORTAG project page (<https://www.tamcmonterey.org/measure-x/programs-projects/fort-ord-regional-trail-greenway/>); FORTAG proponents' website (www.fortag.org). Consultant will also review the FORTAG Master Agreement 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 (<https://www.tamcmonterey.org/measure-x/programs-projects/fort-ord-regional-trail-greenway/>).
- CALTRANS approved the Categorical Exclusion on April 8, 2020 (Cooperative Agreement No. 05-0348).
- TAMC completed the Project Initiation Document on March 1, 2019.

Task 1.5 Field Review FORTAG alignment - The consultant shall review the proposed FORTAG route alignment map and alternative segments and shall be prepared to go out into the field to walk the FORTAG Segment alignment. TAMC staff

will facilitate the walk of the proposed Project route. Caltrans, City representatives, and Monterey Regional Parks District staff will participate.

Task 1.5.2 Implement EIR Mitigation Measures - Design Submittal Review and Response to Comments will utilize the Plans, Specifications and Estimate (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) will ensure design documents, such as Water Pollution Control Plans and the Storm Water Data Report, are consistent with the SWPPP. This will 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, local agencies, as appropriate, to determine the permits and permitting requirements required for the Project.. Consultant will assist in the preparation of all permits, including but not limited to the following permits and agreements:

- Caltrans Cooperative Agreement - Track as an item in the schedule and review for consistency with the project improvements and deliverables.
- Revised Freeway Agreement - Prepare revised maps/exhibits
- Maintenance Agreement - Prepare maps/exhibits showing areas of maintenance responsibility, review draft maintenance agreement provided by State and provide input to City.
- State Encroachment Permit for Construction - Prepare application for TAMC signature
- County Encroachment Permit for Construction - Prepare application for TAMC signature
- City of Del Rey Oaks Encroachment Permit - Prepare application for TAMC signature
- City of Seaside Encroachment Permit - Prepare application for TAMC signature
- Monterey Regional Parks District Encroachment Permit - Prepare application for TAMC signature
- 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 undercrossing, retaining walls, and minor structures
- Improvements at intersections and within PG&E easement
- Constraints analysis
- Rerouting of utilities
- Survey of existing property ownership and status of ownership and status of ownership including fee title, easements, conditions of developments, etc.

Task 2.1 Deliverables: Memorandum detailing the field assessments and surveys, including pictures and maps. Native JPG image files, GIS and AutoCAD files, Word files, Base Plans, and PDF files will be submitted to TAMC.

Task 3: Engineering Design PS&E

Consultant will 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 alignment. Designs will 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 will 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 the 35%, 65%, 95%, and 100% design phase.

The construction documents included in this task include

- Plan Preparation
- 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 Calculation
- 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 will 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:

Title Sheet
Key Map, Abbreviations & General Notes
Horizontal and Vertical Control
Typical Cross Sections
Layout Plans and Profiles
Construction Details
Retaining Walls
Undercrossing Structure
Grading, Erosion Control, and Habitat Protection
Drainage Plan, Profiles, Details (Including Minor Structures)
Storm Water Design Plans and Details
Utilities and Utility Relocations
Signing and Pavement Delineation
Quantities
Traffic Signal Modification (SR 218 / North Fremont Street)
Street Lighting, Trail Lighting, Tunnel Lighting, and Irrigation Control
Stage Construction
Temporary Traffic Control, including bicycles and pedestrians
Landscaping, Habitat Restoration, and Irrigation Plans

Task 3.1.1 35% PS&E: The Consultant will prepare a 35% design that incorporates the approved plan and profile trail alignment on the 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 will provide TAMC and all Stakeholder Jurisdictions with a set of draft 35% project plans for review and comment.

Task 3.1.2 - 65% PS&E: The Consultant will prepare a 65% design that reflects the 35% plan set and stakeholder comments. Consultant will provide TAMC and all Stakeholder Jurisdictions with a set of draft 65% project plans and specifications for review and comment. The 65% PS&E will address issues such as materials specification, testing requirements, bid item list, and bid item measurement and payment.

Task 3.1.3 - 95% PS&E: The Consultant will prepare a 95% design that reflects the 65% plan set and the stakeholder jurisdiction comments. Consultant will provide TAMC and all Stakeholder Jurisdictions with a set of draft 35% project plans for review and comment.

Task 3.1.4 - 100% PS&E: The Consultant will prepare a 100% design that reflects the 95% plan set and the comments from TAMC and Stakeholder Jurisdictions based on that plan set. Consultant will provide TAMC and Stakeholder Jurisdictions with a set of revised project specifications. Final Plans 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 1Geotechnical Design & Materials Report - Consultant shall perform the geotechnical investigation based on Caltrans guidelines for preparation of Geotechnical Design and Materials Reports. Consultant shall collect geotechnical data from as-built Log of Test Borings (LOTB) and drilling borings as needed. At a minimum, new borings will be required along SR 218 east of Carlton Drive for the proposed undercrossing.

- **Research and Data Collection:** Consultant shall review available geologic and soil reports and boring logs.
- **Permits / USA Clearances:** Consultant shall prepare a Caltrans encroachment permit for borings within State right-of-way, map of borings, and temporary traffic control plan. Consultant shall field locate borings and coordinate USA utility clearance.
- **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 will be drilled and capped in accordance with the permit requirements.

- **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 test.
- **Soils Analysis/Evaluation:** Perform engineering analyses and develop design recommendations for the embankments, structures, and pavement design. Slope stability analyses will be required to provide justification for the proposed 'steeper' slopes and design recommendations for retaining walls.
- **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 will be prepared in accordance with Caltrans guidelines. Also specified in the report will be information on groundwater conditions, corrosion evaluations, etc.
- **Prepare Final Geotechnical Design and Materials Report:** Prepare detail report including design recommendations for embankment foundation, retaining walls, proposed slopes, and pavement sections.
- **Design Review Consultation through final design.** Consultant shall assist TAMC during 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 SR 218 undercrossing structure. The 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

The Consultant shall prepare a structures type selection report and submit it to Caltrans Division of structures 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 will include drainage mapping, an evaluation of the existing conditions, identification of unusual / special conditions, hydraulic analysis and design calculations of proposed systems and probable overflow into proposed tunnel. The Drainage report will be submitted to Caltrans District 5 for review and approval.

Task 3.2.5 Stormwater Pollution Prevention Plan - 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. Central Coast Regional Water Quality Control Board Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/hydromod_lid_docs/2013_0032_attach1_post_construction_requirements.pdf

The consultant will 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 will include conducting applicable research, review, and calculations, and developing applicable appendices and attachments. This work program will be directed by a QSD and will include submittal of an electronic copy of the SWPPP.

Consultant will 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 will be completed as a separate task on a time and materials basis, if required, consultant will 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, will be the responsibility of the Contractor and Resident Engineer.

Development of the SWPPP document and its components will meet the current DWQ Construction General Permit guidelines. The construction contractor will 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 - Consultant shall prepare an Environmental Commitments Record (ECR) in accordance with Caltrans standards. The ECR will contain all the relevant information needed to track progress of environmental commitments and identify actions needed to ensure environmental commitments are completed. The ECR will act as a source document for preparing the Environmental Certification discussed below. The ECR will 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 will 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.

3.2.9 Trail Lighting Design Analysis

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

Task 3.2.10 Traffic Analysis - SR 218 / North Fremont Street 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 will be determined. The traffic analysis will be submitted to Caltrans District 5 Traffic Operations for review and approval.

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:

- Landscape design with plant palettes, wall and structure treatments, hardscape palette, irrigation availability, and interpretative opportunities
- Preliminary cost estimates for various elements
- Illustrative sections and sketches
- Stakeholder Jurisdiction input summary
- Determination of approvals and agreements required by Caltrans
- Final Landscape Master Plan Exhibits

Task 3.3 Quality Assurance/Quality Control (QA/QC) Review - Consultant will 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 will also include independent review of all subconsultant generated reports and documents including but limited to:

Geotechnical Reports
Environmental Documents
Plats and Legal Descriptions
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.

Task 3.4 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 along the south side of Plumas Drive; 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 will 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 will provide TAMC and Caltrans a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements for Caltrans' concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the project plans, specifications, and estimate.

2. RW Engineering

The consultant will provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and right-of-way engineering documents will 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 will 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 State right-of-way, the TAMC will acquire in its own name. If Caltrans acquires any right-of-way, Caltrans will first acquire it in TAMC's name. Title to the State Highway System right-of-way will ultimately be vested in the State. Caltrans' acceptance of title will occur after the Right-of-Way Closeout activities are complete.

5. RW Certification

The consultant will utilize a properly licensed consultant for all right-of-way activities, under the review and supervision of TAMC. A qualified right-of-way agent will administer all right-of-way consultant contracts. The consultant will prepare right-of-way certification. TAMC will submit a draft Right-of-Way Certification to Caltrans six weeks prior to the scheduled Right-of-Way Certification milestone date for review. TAMC will 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 or highway. 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 will 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 will prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the project or that violate Caltrans' encroachment policy. The consultant will 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 will be addressed in the Project plans, specifications, and estimate.

Task 5.2 PS&E Utility Relocation Cost

The consultant will 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 four local jurisdictions running through parks and residential streets. The parks in each jurisdiction are enjoyed by a wide range of users. During the environmental process, those users expressed deep interest in participating in the design process. For this reason, the community outreach effort will focus on gaining consensus on the final trail design with each jurisdiction.

Task 6.1 Community and Stakeholder Meetings and Design Workshops - The consultant will 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 parks, easements, and on residential streets with focus on SR 218 Canyon Del Rey undercrossing and the Frog Pond switchback. Consultant shall prepare all meeting materials and facilitate outreach. Consultant will 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:

- 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.
- Stakeholder Jurisdictions (estimated 3 meetings at each of these): The consultant shall organize meetings and make presentations to and receive comments from the Cities of Del Rey Oaks, Seaside, and the Monterey Peninsula Regional Parks District.
- Staff Level and Agency Partners Meetings (estimated 3-4 meetings with this group): Caltrans and Stakeholder Jurisdictions staff, Monterey Peninsula

Regional Park District. The consultant shall also participate in one-on-one meetings to follow-up with staff on design issues.

- Community Workshops (estimated 1-2 meetings in each of these locations): organize and sponsor workshops in Del Rey Oaks and Seaside areas 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 will 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 will 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.

Task 6 Deliverables: Community and stakeholder outreach plan; Meeting agendas and materials; Presentation graphics and simulations; Meeting minutes. Total estimated number of meetings: 20

Task 7: Design Services during Construction

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

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.

Design Services During Construction

The Consultant shall provide design support during Project construction by answering contractor inquiries and preparing any design modifications for construction contract change orders and related to CGP deliverables and SWPPP revisions for submittal to the SWRCB at various phases of construction.

Construction Staking

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

Record Drawings

Based on redline markups of the construction contract drawings provided by the contractor and resident engineer, the Consultant shall prepare record drawings using AutoCAD that reflect the actual improvements constructed in the field and submit them to Caltrans, TAMC, and each Stakeholder Jurisdiction.

ATTACHMENT B

SAMPLE TAMC STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND [REDACTED]
AGREEMENT FOR PROFESSIONAL SERVICES
RELATED TO [PROJECT TITLE]
APPROVED BY THE TAMC BOARD ON: [REDACTED]

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 [START DATE], 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 34. Unless earlier terminated as provided herein, this Agreement shall remain in force until [FINAL DATE – JUNE 30 OR DECEMBER 31]. 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 and brief description for this work is as follows:

[INSERT: PROJECT TITLE: BRIEF DESCRIPTION]
 - (b) Consultant represents that Consultant and its agents, subcontractors 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, subcontractors, 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 subcontractors 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 TAMC of the new project manager.
- (f) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the 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. In the event that 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 Contract Administrator at the address contained in Paragraph 35 (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 Contract Administrator 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

[] 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.
- iii. 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) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

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

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.
- (f)

8. Indemnification.

- (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 subcontractor, 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 subcontractors), 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 subcontractor, 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 subparagraph 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 Two Million Dollars (\$2,000,000) per claim and Five Million Dollars (\$5,000,000) 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 subcontractor performing work under this Agreement, or be accompanied by a certificate of insurance for each subcontractor 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 Sec. 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 subcontractor employing one or more employees, and Consultant shall be responsible for all subcontractors' 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 contract administrator 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, 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 Chief Financial Officer.
- (b) Not later than 30 days after issuance of the final audit report, Consultant may request a review by TAMC'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- (c) Neither the pendency of a dispute nor its consideration by 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 contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the 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 subcontractors 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. 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.
21. 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 Contract Administrator, except that, which is expressly identified in the approved Budget/Cost Proposal.
- c) Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by TAMC.
- d) 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.
- e) Any substitution of subconsultant(s) must be approved in writing by TAMC's Contract Administrator prior to the start of work by the subconsultant(s).
- f) 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.

22. 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 may 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.

23. 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, 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.

24. 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.

25. 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 Unites 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.

26. Prevailing Wages.

- a) Consultant shall comply with the 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.

27. Equipment, Supplies or Consultant Services Purchases.

- (a) Prior authorization in writing by TAMC's Contract Administrator 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 Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- (c) Any equipment purchased as a result of this 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).

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. Contract Administrators. Consultant's designated principal responsible for administering Consultant's work under this Agreement shall be [NAME], Project Manager; TAMC's designated administrator of this Agreement shall be Debra L. Hale, Executive Director. TAMC's Project Manager under this Agreement shall be [NAME].

35. Notices. Notices required under this Agreement shall be delivered personally or by electronic facsimile, or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery or facsimile transmission, 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:	Debra L. Hale	To Consultant:
	Executive Director	
	55-B Plaza Circle	
	Salinas, CA 93901	
Tel:	831-775-0903	Tel:
Fax:	831-775-0897	Fax:
Email:	debbie@tamcmonterey.org	Email:

36. Non-exclusive Agreement. This Agreement is non-exclusive and both parties reserve the right to contract with other entities for the same or similar services.

37. Execution of Agreement. Any individual executing this Agreement on behalf of an entity represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and to bind the entity to the terms and conditions hereof. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

38. Debarment and Suspension Certification.

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

- (b) Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- (c) Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

39. Rebates, Kickbacks or Other Unlawful Consideration Prohibited. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful 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.

40. 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.

41. 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

42. 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.

[Consultant] - Standard Agreement
Approved by TAMC Board on [date]

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

TAMC

[CONSULTANT]

By: _____
Debra L. Hale
Executive Director

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

By: _____
Name: _____
Title: _____

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: _____

*[Consultant] - Standard Agreement
Approved by TAMC Board on [date]*

EXHIBIT A: Scope of Work and Schedule

*[Consultant] - Standard Agreement
Approved by TAMC Board on [date]*

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							

*[Consultant] - Standard Agreement
Approved by TAMC Board on [date]*

Exhibit D: ADA Best Practices for Documents and Outreach

