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## REQUEST FOR PROPOSALS

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

### **ARSENIC CLEANUP COST ESTIMATE**

You are invited to submit your proposal for the services to complete the above project. Proposals are due via email to the project manager, Christina Watson, [christina@tamcmonterey.org](mailto:christina@tamcmonterey.org) by **12:00 noon Pacific Daylight Time on Thursday, June 6, 2019.**

Copies of the RFP and the detailed information regarding the submission of the proposal are available at the TAMC offices and may be obtained upon request. This RFP is available at the TAMC website ([www.tamcmonterey.org](http://www.tamcmonterey.org)) in Adobe Acrobat (PDF) format. You may email Christina Watson, [christina@tamcmonterey.org](mailto:christina@tamcmonterey.org) to obtain a copy and for further information.



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TRANSPORTATION AGENCY FOR MONTEREY COUNTY

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**DATE:** May 6, 2019  
**TO:** Interested Consultants  
**FROM:** Debra L. Hale, Executive Director  
**SUBJECT:** Arsenic Cleanup Cost Estimate

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**INVITATION**

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

Please submit one (1) digital copy of your Proposal via email to Christina Watson, [christina@tamcmonterey.org](mailto:christina@tamcmonterey.org) or to the office of the Transportation Agency for Monterey County (TAMC), 55 B Plaza Circle, Salinas, CA, 93901, by **12:00 noon PDT on Thursday, June 6, 2019**. 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:

Christina Watson  
Project Manager  
55B Plaza Circle  
Salinas, CA 93901  
[christina@tamcmonterey.org](mailto:christina@tamcmonterey.org)

Email inquiries, including the submittal of the Proposal, relating to this Request for Proposals should include "Arsenic Cleanup Cost Estimate" 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**

TAMC is the lead Agency on the proposed extension of passenger rail service to Salinas, which includes the construction of a train layover facility and associated improvements in Salinas. In preparation for the acquisition of properties for that layover facility, this request for proposals will be used by TAMC to select a consultant or consultant team to perform an arsenic cleanup cost assessment for one parcel.

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 \$10,000. There is no federal funding on this project.

## **PROJECT SCHEDULE**

This project is anticipated to take approximately three (3) months to complete, starting in June 2019 and being completed by September 2019.

## **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. Should the most qualified consultant or consultant team and TAMC fail to successfully negotiate a final scope of work, 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 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	<b><u>Firm Profile &amp; Project Team:</u></b> Do the qualifications of key personnel to be assigned to the project coincide with tasks listed in the Scope of Work? Do assigned personnel and sub-consultants have requisite education, experience, and professional qualifications? Does the firm’s organizational structure show sufficient depth for its present workload, and do assigned personnel have sufficient availability for project? Does the firm accept the contract terms as proposed?	20 points
2	<b><u>Relevant Project Experience:</u></b> Has the firm demonstrated the ability to successfully provide services for projects of a similar complexity and nature as described herein?	20 points
3	<b><u>Specific Approach:</u></b> How will the firm, specifically the key personnel assigned to the project, apply its techniques and resources to ensure the project is properly completed? How will key personnel approach problems when they arise? Has the firm described its ability to achieve specified project delivery goals? Has the firm considered alternative concepts to achieve the desired goals?	40 points
4	<b><u>References:</u></b> Are the firm’s references from past clients and associates favorable? Does the firm show financial and operational stability?	10 points
5	<b><u>Cost</u></b>	10 points

**Total of 100 possible points**

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

This Request for Proposals and any addenda will be posted on the Agency's website ([www.tamcmonterey.org](http://www.tamcmonterey.org)). Questions and answers regarding the request for proposals will also be posted on the website. All potential bidders are responsible for checking the website for any addenda to the bid documents, and the proposal must cite any addenda to be 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, PDT, on Thursday, May 30, 2019**, to guarantee response or consideration. Responses to questions concerning this Request for Proposals posed before this deadline will be posted on the Agency's website ([www.tamcmonterey.org](http://www.tamcmonterey.org)).

## **SUBMITTAL REQUIREMENTS/PROPOSAL FORMAT**

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

### **A. Project Team**

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

### **B. Demonstrated Knowledge**

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

### **C. Work Plan**

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

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

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

**E. References**

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

**F. Project Budget**

The Budget shall include an estimated cost per task using the appropriate Caltrans cost proposal format.

**PROPOSED SCHEDULE**

<b>Date/ Timeframe</b>	<b>Task</b>
May 6, 2019	Distribute RFP
May 30, 2019	Deadline for questions and/or requests for clarification or exceptions by 12:00 pm noon PDT
June 6, 2019	<b>Proposals due by 12:00 pm noon PDT</b>
June 10, 2019	Review and rank proposals
June 10-12, 2019	Hold interviews (if necessary)
June 12, 2019	Determine top ranked consultant, send Tentative Award letter, negotiate contract

**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 approval. The firm recommended is not a final selection and no contract is certain until approved and executed by the TAMC Executive Director.

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, Christina Watson, [christina@tamcmonterey.org](mailto:christina@tamcmonterey.org).

Attachments:

- A. Scope of Work
- B. Sample TAMC Standard Agreement for Professional Services
- C. Sample Invoice Cover Page Format



## ATTACHMENT A

### SCOPE OF WORK

TAMC is the lead Agency on the proposed extension of passenger rail service to Salinas, which includes the construction of a train layover facility and associated improvements in Salinas. In preparation for the acquisition of properties for that layover facility, TAMC now seeks a consultant to perform an arsenic cleanup cost assessment for one parcel.

In April 2019, Geocon presented the final Phase II Environmental Site Assessment (ESA) for the Salinas Rail project Package 2 properties. That report noted:

*The reported arsenic concentration of 26 mg/kg in sample S3-0 (B&P Neubert, APN 002-021-008) is outside the range of background concentrations and is considered to be elevated. The elevated concentration is likely a residual from former site use for pesticide and herbicide production.*

Building on this study, the next step is to perform an assessment of the soil cleanup costs to assist the property acquisition team. The Package 2 work will include disturbing the soil to install rail lines for a layover facility and station track. The appraisal for the parcel should consider the cost for cleaning up the arsenic.

The parcel in question (APN 002-021-008) has the street address of 320 West Market Street and totals 96,137 square feet, although TAMC is only planning on acquiring a portion of this parcel proximate to the rail line, approximately 47,607 square feet according to the plat map and legal description completed on April 17, 2019.

The cleanup cost estimate should consider workplan preparation, permitting, mobilization, soil excavation and backfill, soil profiling and disposal, confirmation sampling and final report writing, additional sampling and analysis to further refine the extent of arsenic impacts, health and safety requirements during field implementation, landfill disposal costs and landfill taxes.

Relevant reports done for this project to date include a 2015 Phase I ESA, a 2017 site investigation, and the 2019 Phase II ESA. All are available for review here:

[http://bit.ly/SNS\\_Haz\\_Mat\\_Reports](http://bit.ly/SNS_Haz_Mat_Reports).



**TRANSPORTATION AGENCY FOR MONTEREY COUNTY**  
**AND**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**RELATED TO SALINAS RAIL PACKAGE 2**  
**ARSENIC CLEANUP COST ASSESSMENT**  
**6803.3.SAL.60**

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 \_\_\_\_\_ 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:

Perform a cost assessment of soil cleanup costs to assist the property acquisition team for a property in Salinas. The cost assessment for arsenic cleanup shall include workplan preparation, permitting, mobilization, soil excavation and backfill, soil profiling and disposal, confirmation sampling and final report writing, additional sampling and analysis to further refine the extent of arsenic impacts, health and safety requirements during field implementation, landfill disposal costs and landfill taxes.

- (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 Rates of Compensation.
- i. Work on shall be directed via Task Orders.
  - ii. Consultant will be reimbursed for hours worked at the hourly rates specified in Exhibit B to this Agreement, which rates shall be inclusive of direct salary costs, employee benefits, overhead and fees, if any. These rates are not adjustable for the performance period set forth in this Agreement beyond that specified in Exhibit B.
  - iii. In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in Exhibit B: Budget and identified in the executed Task Order and Task Order Budget.
  - iv. Once a specific project to be performed under this Agreement is identified by TAMC, TAMC's Project Manager will prepare a draft Task Order without the cost estimate. The draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and a TAMC Task Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days, along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee (if any), and a total dollar amount for the Task. After agreement has been reached on the negotiable items and total not-to-exceed cost, a finalized Task Order with the finalized Task Order Budget shall be signed by both TAMC and Consultant.
  - v. If no agreement on the Task Order is reached within a reasonable amount of time, TAMC may take such other actions as TAMC deems appropriate to accomplish the Task.
  - vi. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Exhibit B: Budget.
  - vii. A Task Order is of no force or effect until returned to TAMC and signed by an authorized representative of TAMC. No expenditures are authorized on a project or task, and work shall not commence until a Task Order for that project/task has been executed by TAMC.
  - viii. The period of performance for Task Orders shall be in accordance with the dates specified in the Task Order. No Task Order will be written which extends beyond the expiration of this Agreement.

- ix. The total amount payable by TAMC for an individual Task Order shall not exceed the amount agreed to in the Task Order Budget, unless authorized by a written amendment.
- x. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- xi. Task Orders may not be used to amend this Agreement and may not exceed the scope of work, or the term, of this Agreement.
- xii. The total amount payable by TAMC under all Task Orders resulting from this Agreement shall not exceed the amount specified in Section 2 of this Agreement. It is understood and agreed that there is no guarantee, either expressed or implied, that this total dollar amount will be authorized under this Agreement through Task Orders.

5. Retention of Funds.

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

8. Indemnification.

- (a) To the fullest extent permitted by law, including California Civil Code sections 2782 and 2782.6, Consultant shall defend (with legal counsel reasonably acceptable to TAMC), indemnify and hold harmless TAMC, its officers, agents, and employees, from and against any and all 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, its officers, agents, and employees. To the extent there is an obligation to indemnify under this Paragraph, 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.
- (b) Notwithstanding any other provision of this Agreement, Consultant's obligation to defend, indemnify and hold harmless TAMC shall survive the termination or expiration of the Agreement for a term to include the applicable statute of limitations related to the Consultant's performance pursuant to the Agreement.

9. Insurance.

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

expiration or termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the surviving term of Consultant’s obligation to defend, indemnify and hold harmless TAMC as set for in Paragraph 8.

- ✓ Comprehensive automobile insurance covering all motor vehicles, including owned, leased, hired and non-owned vehicles used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
  - (b) All insurance required under this Agreement shall be with a company acceptable to TAMC and authorized by law to transact insurance business in the State of California. Unless otherwise provided in this Agreement, all such insurance shall be written on an occurrence basis; or, if any policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of two years following the date of Consultant’s completion of performance hereunder.
  - (c) Each policy of insurance required under this Agreement shall provide that TAMC shall be given written notice at least thirty days in advance of any change, cancellation or non-renewal thereof. Each policy shall provide identical coverage for each 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.

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

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

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 Christina Watson, Principal Transportation Planner.
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.

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.

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Approved as to form:

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

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

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For TAMC internal use:

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

**Attachment D: Sample Invoice Format**  
**Salinas Rail Project Package 2 Arsenic Cleanup Cost Estimate**  
**[Consultant Firm Name]**

Contract Budget		
Task #	Task	Fee
1	[Description of task]	
2		
3		
4		
[etc]		
	TOTAL	\$ -

Invoice Date	Invoice number	Dates of work	Task	Allocated Budget	Previously billed	Current billing	Billed to date	Percent billed to date	Remaining funds in contract	Work performed this period
			1							
			2							
			3							
			4							
			[etc]							
			TOTAL							