

Standard City of San José Consultant Agreement

(4308 - FEMA - ALUM ROCK PARK VISITOR CENTER AND SERVICE ROAD - SCSJC93-8728 & SCSJE87 - 8768)

This Agreement is between the City of San José, a municipal corporation ("City"), and Fall Creek Engineering, Inc., a California corporation ("Contractor").

This Agreement is made and entered into this ____ day of _____, 2018 ("Contract Date").

THE CITY AND CONTRACTOR AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 **General:** This Agreement sets forth the terms and conditions under which the Contractor will provide professional consulting services to the City.
- 1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
 - Exhibit B:** Compensation
 - Exhibit C:** Insurance Requirements
 - Exhibit D:** FEMA Provisions – Contractor Agreements
- 1.3 **Director:** "Director" means the Director of Public Works or the Director's designee.
- 1.4 **Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct business.
- 1.5 **Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 **Amendments:** This Agreement can be modified only by mutual agreement of the parties. To be binding, a modification of the Agreement must be in writing and signed by each party by a person properly authorized to bind the party.

Either party can propose a modification of the scope of work, method of performing the work, price of the work, schedule for completing the work, or any other part of the Agreement by providing the other party with a written proposal of the modification. The written proposal must contain a detailed description of the proposed modification along with its cost implications. The written proposal must include the specific language of the proposed modification. The party receiving a modification proposal will respond in writing by either agreeing to the proposal, rejecting the proposal, or requesting additional information needed to evaluate the proposal.

2. AGREEMENT TERM

The Agreement term is from the Contract Date to July 31, 2020, unless terminated earlier pursuant to Section 19 below.

3. SCOPE OF SERVICES

- 3.1 **Basic Services:** "Basic Services" means the services set forth in **Exhibit A**. The Contractor must perform the Basic Services to the Director's satisfaction.
- 3.2 **Additional Services.** Not applicable.

4. DESIGN SERVICE REQUIREMENTS

- 4.1 **General:** This Section applies to any design services the Contractor performs as part of the Basic Services or Additional Services.
- 4.2 **Standard Documents:** The Contractor is, or will become, familiar with the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San Jose, Department of Public Works, Standard Details, dated July 1992 (and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively "Standard Project Documents").
- 4.3 **Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Contractor must be based on, and must incorporate, the Standard Project Documents.

5. CITY'S CONTRACT MANAGER

The City's contract manager for this Agreement is:

Name: Trinh Le	Phone No.: (408) 535-7859
Department: Public Works	E-mail: Trinh.Le@SanJoseCA.gov
Address: 200 East Santa Clara, 6 th Floor, San Jose, California 95113	

The Director can change the above contract manager by giving the Contractor written notice.

6. CONTRACTOR'S STAFFING

- 6.1 **Contractor's Contract Manager and Other Staffing:** Identified below are the following: (a) the Contractor's contract manager, and (b) the Contractor(s) and/or employee(s) of the Contractor who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Contractor must comply with the requirements of Subsection 17.2 below.

		Required to File Form 700?		
		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
<u>CONTRACTOR's Contract Manager</u>				
Name: Robyn Cooper	Phone No. (831) 426 9054 x 103		<u>Yes</u>	

Address: 1525 Seabright Ave Santa Cruz, CA 95062	E-mail: <u>rcooper@fallcreekengineering.com</u>			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1. Peter Haase	Principal Engineer		Yes	
2. Alicia R. Sherrin	Associate Engineer		Yes	

6.2 Contract Manager's Authority: The Contractor's contract manager is authorized to act on behalf of the Contractor.

6.3 Staffing Changes: The Director's prior written approval is required for the Contractor to remove, replace or add to any of its staffing identified in this provision.

7. USE OF SUBCONTRACTORS

7.1 Authority to Use: Whichever of the following is marked applies to this Agreement:

- ☐ The Contractor can ***not*** use any subcontractors without the Director's prior written approval.
- ☒ The Contractor will use the following subcontractors for the specified areas of work. The Contractor can not remove, replace or add to any of the subcontractors identified in this provision without the Director's prior written approval.

Subcontractor's Name	Area of Work
1. Rincon Consulting	Environmental and Permitting
2. Streeter	Structural Design
3. Cal Engineering and Geology	Geologic and Geotechnical
4. PGA Design	Landscaping and Erosion
5. Higgins	Traffic Control
6. Towill, Inc.	Survey

7.2 Subcontractor Work: the Contractor warrants all services and deliverables provided by any subcontractors it uses, and represents that each such subcontractor is specially trained, experienced, and competent to perform its portion of the work.

7.3 Subcontractor Compliance: The Contractor shall place in each Subcontractor agreement the requirement that the Subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Agreement including FEMA obligations in exact form and substance of those contained in Exhibit D.

8. INDEPENDENT CONTRACTOR

- 8.1 General:** the Contractor has complete control over its operations and employees, and is an independent contractor. The Contractor is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Contractor does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2 Subcontractors:** As an independent contractor, the Contractor has complete control over its subcontractors, subcontractors, suppliers, agents and any other person or entity with whom the Contractor contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Contractor is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3 Indemnity:** The Contractor shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Contractor represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Contractor represents that its performance of the Basic Services will conform to the standard of practice of the industry that specializes in performing these services of a like nature and complexity.

10. COMPENSATION

- 10.1 Cost Plus Fixed Fee:** The City will pay the Contractor for all Basic Services completed in accordance with this Agreement based on actual cost plus a fixed fee.
- 10.2 Maximum Total Compensation:** The maximum compensation the City will pay the Contractor for completing the Basic Services is \$480,165 ("Maximum Total Compensation"). The fixed fee portion of the Maximum Total Compensation is \$39,006 ("Fixed Fee"); the remaining \$441,159 of the Maximum Total Compensation is the maximum amount the City will reimburse the Contractor for actual costs incurred in performing the Basic Services ("Maximum Actual Costs").
- 10.3 Actual Costs:** Actual costs are the cost of labor, employee benefits, equipment rental, overhead and other direct costs incurred by the Contractor in performing the Basic Services. The City will reimburse the Contractor for actual costs in accordance with this Section 10.3.
- 10.3.1 Labor Costs:** Employees of Contractor and its subcontractors will be paid at the hourly rates set forth in the Schedule of Rates and Charges, which is attached as Part II of Exhibit B, entitled "Compensation."
- 10.3.1.1 Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay Contractor Premium Pay.
- 10.3.1.2 Billing Increments:** Except as otherwise provided in Exhibit B, entitled "Compensation," the Contractor will bill the City in increments of 1/4th of an hour. Compensation for a service will be determined by multiplying the applicable increment by the hourly rate applicable to the category of person performing the service. For example, if a Senior Engineer/Project Manager

spent 1 hour and 15 minutes completing a service, the compensation for that service would be \$150.55 (1.25 hours x \$150.55).

10.3.1.3 Lowest Hourly Rate: The Contractor must bill the City for a service at the hourly rate applicable to the category of persons with the lowest hourly rate who is reasonably capable of performing the service. For example, if a Senior Engineer performs services that a Staff Engineer reasonably could have performed, then the Contractor must use the hourly rate applicable to the Staff Engineer for billing purposes.

10.3.1.4 Properly Performed Services: The Contractor is only entitled to payment for services properly performed in accordance with this Agreement, as reasonably determined by the City's Project Manager.

10.3.2 Prevailing Wages. For purposes of this Agreement, "construction" has the meaning set forth in California Labor Code Section 1720(a) and includes construction-oriented work performed during the design and preconstruction phases, such as inspection, surveying, drilling, trenching, and excavation ("Construction").

10.3.2.1 Requirement: Notwithstanding anything to the contrary in this Agreement, the Contractor and its subcontractors will pay, or cause to be paid, to all workers performing Construction the applicable prevailing wage for such work in accordance with California prevailing wage requirements. The applicable prevailing wage shall be the wage rate established by the State Department of Industrial Relations for the applicable job classification.

10.3.2.2 Records: The Contractor shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages, including, but not limited to, certified payroll records conforming to California Labor Code Section 1776. The Contractor shall maintain these records in accordance with the requirements of Subsection 16.1 of this Agreement. The Contractor shall provide to the City, at no cost to the City, a copy of all such records within 10 Business Days of a request for such records by the division of the City responsible for labor compliance.

10.3.2.3 Subcontractors: The Contractor shall include these provisions in all Subcontractor agreements involving Construction.

10.3.3 Reimbursable Expenses: The City will reimburse the Contractor for expenses in accordance with the following:

Reimbursable Expense Schedule		Mark Up
1.	The actual cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The actual cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Actual telephone and facsimile transmission charges.	No Markup

4.	The actual rental cost of any specialized equipment under the following conditions: a) the equipment is necessary to perform the Basic Services, and b) the City's Contract Manager <i>preapproves, in writing</i> , the use and cost of such rental.	No Markup
5.	Mileage and other travel-related expenses under the following conditions: a) The expense complies with the more restrictive of (i) the requirements applicable to the City's reimbursement of its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3) or (ii) any applicable Federal requirements applicable to the reimbursement of travel expenses; and b) The City's Contract Manager <i>preapproves, in writing</i> , the travel-related expense.	No Markup
6.	Any other expenses as set forth in the Schedule of Rates and Charges in Exhibit B.	No Markup

10.3.3 No Increases: The City will ***not*** increase the Schedule of Rates and Charges during the Agreement term.

10.3.4 Conflict: In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

10.3.5 Federal Cost Principles: The Contractor agrees that, to the best of its knowledge, all direct costs identified in the Agreement are actual, reasonable, allowable, properly allocable to this Agreement, and otherwise comply with the Federal cost principles, including 48 Code of Federal Regulations Part 31, entitled "Contractor Cost Principles and Procedures."

10.3.6 Milestone Actual Cost Estimates Per Task: The Compensation Table, attached as Part I of Exhibit B, entitled "Compensation," sets forth the estimated Maximum Actual Cost for each task. The City's Project Manager may modify the estimated Maximum Actual Cost of the various tasks in writing, provided that the total Maximum Actual Cost is not exceeded.

10.4 Fixed Fee: In addition to paying the Contractor Reimbursable Actual Costs, the City will pay the Contractor the Fixed Fee in accordance with this provision. The City and Contractor negotiated the Fixed Fee based on the size, complexity, duration, and risk involved in providing the Basic Services.

10.4.1 Nonadjustable: The Fixed Fee is nonadjustable for the term of the Agreement. Notwithstanding the foregoing, the Fixed Fee can be adjusted if there is a significant change in the scope of the Basic Services and such adjustment is made by amending the Agreement.

10.4.2 Payment of Fixed Fee: The City will pay a percentage of the Fixed Fee upon the completion of the tasks as more specifically stated in the Compensation Table, attached as Part 1 of Exhibit B, entitled Compensation. For purpose of this provision, "completion" means that the Contractor has completed all work for the task in accordance with this Agreement and the City's Project Manager has accepted all such

work as being completed. Payment of the Fixed Fee is subject to the following additional conditions:

10.4.2.1 City's Termination of Agreement for Convenience: If the City terminates this Agreement early for convenience, the City will pay the Contractor the percentage of the Fixed Fee equal to the percentage of work completed as of the date of termination. For example, if on the date of termination the Contractor completed 40 percent of Task A and 75 percent of Task B, the City would pay 40 percent of the Fixed Fee allocated to Task A and 75 percent of the Fixed Fee allocated to Task B.

10.4.2.2 City's Termination of Task for Convenience: If the City deletes a task or tasks for convenience, the City will pay the Contractor the percentage of the Fixed Fee equal to the work completed as of the date the City deletes the task. For example, if the City deletes Task A after the Contractor has completed 80 percent of the work on Task A, the City will pay the Contractor 80 percent of the Fixed Fee allocated to Task A.

10.4.2.3 Delay in Completing a Task: If completion of a portion of a task is delayed due to no fault of the Contractor, the City's Project Manager can authorize, in writing, the payment of the percentage of the Fixed Fee equal to the percentage of the task completed. For example, if Contractor completes 60 percent of Task A and completion of the remaining 40 percent of the Task is delayed for reasons beyond the Contractor's control, the City's Project Manager can authorize, in writing, the payment to Contractor of 60 percent of the Fixed Fee for Task A.

10.5 Limitations: The City will not reimburse the Contractor for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in Exhibit B, entitled "Compensation," unless additional reimbursement is provided for by contract amendment. In no event will the City reimburse the Contractor for overhead costs at a rate that exceeds overhead rates set forth in Exhibit B. In the event, that City determines that a change to the work from that specified in this Agreement is required, the Agreement time and/or actual costs reimbursable by City will be adjusted by contract amendment to accommodate the changed work.

10.6 Exclusive Compensation: The Contractor is not entitled to any other fees, markups or other forms of compensation for services performed in accordance with this Agreement.

10.7 Invoices: The City will make progress payments monthly in arrears on Basic Services and allowable incurred costs. Each invoice must meet the following minimum requirements:

- Provide line item detail for actual work performed on each task of the Basic Services, including the date and hours of work, the name and title (category/classification) of the person who performed the work, a detailed description of the work the person performed, and a statement as to why a person in a lower pay classification could not have performed the work;
- If the actual time for performing the work exceeded the agreed upon time estimate, explain why the work took longer;
- Separately show each item of actual cost for each item of work, and;
- Provide a detailed explanation of any expenses for which reimbursement is requested, including the written pre-authorization of the City's Project Manager if required by the Agreement for the expense to be reimbursable.

10.8 Tax Forms Required: The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

10.8.1 U.S. Based Person or Entity: If the Contractor is a U.S. based person or entity, the Contractor acknowledges and agrees that the Contractor is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Contractor is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Contractor acknowledges and agrees that the Contractor is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

10.8.2 Non-U.S. Based Person or Entity: If the Contractor is not a U.S. based person or entity, the Contractor acknowledges and agrees that the Contractor is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

11.1 Obligation: The Contractor shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Contractor's negligent performance of all or any part of the Basic Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Contractor, any of its Subcontractors, anyone directly or indirectly employed by either the Contractor or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Contractor pursuant to the requirements of this Agreement; or
- Breach of this Agreement by the Contractor.

11.2 Limitation on Obligation: The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.

11.3 Duty to Defend: The Contractor's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Contractor, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

11.4 Insurance: The City's acceptance of any insurance in accordance with Section 12 does not relieve the Contractor from its obligations under this Section 11. The Contractor's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

- 11.5 Survival:** The Contractor's obligations under this Section 11 survive the expiration or earlier termination of the Agreement, and is limited in time only by the applicable statute of limitations for bringing a claim or cause of action.
- 11.6 Release:** Contractor acknowledges that performance of the Basic Services may expose its employees, agents and contractors to inherently dangerous activities and Contractor is voluntarily performing the Basic Services with knowledge of the danger involved.

12. INSURANCE REQUIREMENTS

- 12.1 General:** The Contractor shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 Documentation:** Before performing any services, the Contractor must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Contractor or any other person engaged directly or indirectly by the Contractor to perform the Contractor's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").
- 13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Contractor hereby assigns to the City all copyrights to such works when and as created.
- 13.3 City's Reuse:** Notwithstanding Subsection 13.1, the City's reuse of any Work Product is subject to California business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.
- 13.4 Contractor's Reuse:** With the Director's prior written consent, the Contractor may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Contractor shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Contractor, or (c) information prepared, developed or received by the Contractor or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Contractor will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Contractor is otherwise prohibited from disclosing.

14.3 Limit on Prohibition: The prohibition in Subsection 14.1 above does not apply to disclosures between the Contractor and its Subcontractors that are needed to perform the Basic Services.

14.4 Survival: This Section 14 survives the expiration or earlier termination of this Agreement.

15. AUDIT/INSPECTION OF RECORDS

15.1 Retention Period: The Contractor shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Contractor under this Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Contractor's charges for performing services, or to the Contractor's expenditures and disbursements charged to the City; and
- All Work Product and other records evidencing Contractor's performance.

15.2 Producing Records: At any time during the Agreement term or during the period of time that the Contractor is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Contractor shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Contractor shall produce the requested Records at no cost to the City.

15.3 State Auditor: In accordance with Government Code Section 8546.7, the Contractor may be subject to audit by the California State Auditor with regard to the Contractor's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

16.1 Prohibition: The Contractor shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

16.2 Conditions of Prohibition: The prohibition in Subsection 16.1 is subject to the following conditions:

16.2.1 Reasonable Accommodation: The prohibition is not intended to preclude the Contractor from providing a reasonable accommodation to a person with a disability.

16.2.2 Compliance Reports: The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer may require the Contractor to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.

16.2.3 Waiver: The Compliance Officer may waive any of the requirements of this Section if the Compliance Officer determines that the Contractor has its own nondiscrimination/nonpreference requirements or is bound in the performance of this

Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Contractor or other governmental agency are substantially the same as those imposed by the City.

16.2.4 Violation: A violation of the prohibition or any part of this Section 16 constitutes the following: (a) a material breach of this Agreement, (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.

16.3 Subcontracts: The Contractor shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

16.4 Fair Practices Act: The Contractor acknowledges that the funding for the Basic Services to be performed under this Agreement is in whole or in part from the State Government. Contractor agrees to comply with the Fair Practices Act in connection with the performance of work under this Agreement wherein it agrees it will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age or national origin; and it agrees to take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age or national origin, and hereby give assurance that it will immediately take any measures necessary to effectuate this Agreement.

17. CONFLICT OF INTEREST

17.1 General: The Contractor represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Contractor certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Contractor shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Contractor has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

17.2 Filing Form 700: In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Contractor shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

17.3 Future Services: The Contractor acknowledges each of the following with regard to performing future services for the City:

- The Contractor's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Contractor performing or participating in the performance of some related **future** services, particularly if the services

required by this Agreement comprise one element or aspect of a multi-phase process or project;

- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Contractor from performing or participating in the performance of such future services; and
- The Contractor is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The Contractor shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <http://www.sanjoseca.gov/?nid=1774>. Environmental procurement policies and activities related to the completion of Contractor's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

- 19.1 For Convenience:** The Director may terminate this Agreement at any time and for any reason by giving the Contractor written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material breach by the Contractor. If the Director terminates the Agreement for cause and obtains the same services from another Contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.
- The Contractor may terminate this Agreement immediately upon written notice for City's failure to make payment.
- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Contractor to provide to the City any finished or unfinished Work Product prepared by the Contractor up to the date of Contractor's receipt of the written notice of termination.
- 19.4 Compensation:** The City will pay the Contractor the reasonable value of services satisfactorily rendered by the Contractor to the City up to the date of Contractor's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Contractor provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the Contractor's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City:

Public Works
Attn: Michael Mai
200 East Santa Clara Street
San Jose, California 95113
408-793-4150

Michael.Mai@sanjoseca.gov

To the Contractor:

Fall Creek Engineering, Inc.
Attn: Peter Haase
1525 Seabright Ave
Santa Cruz, California 95062
(831) 426-9054 x103
phaase@fallcreekengineering.com

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Contractor represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Contractor shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Contractor's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Contractor represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Contractor shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Contractor's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Contractor is not a waiver of any other violation by the Contractor.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Contractor shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Contractor's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Contractor represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Contractor to use subcontractors, the Contractor shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the interpretation and performance of this Agreement.

- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 21.12 Acknowledgement and Exhibits:** This is an acknowledgement that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund the Agreement. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. Additional terms and conditions required by the state and/or federal government are attached in these Exhibits. Contractor shall comply with all the terms and conditions in the Exhibits. To the extent there is a conflict between the provisions of this Agreement, the most stringent requirements shall apply.

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IN WITNESS WHEREOF, the City and Contractor have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Contractor must make one of the following representations by placing its initials in the space provided. **The City will not process this Agreement unless the Contractor has initialed one of the provisions.**

____ Contractor certifies that the Contractor has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Contractor will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Contractor ceases to have a permanent place of business in California or ceases to do any of the above, the Contractor will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

____ If the Contractor is unable to make the above certification, the Contractor acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

City of San José

Contractor

By _____

By _____

Name: **Toni J. Taber, CMC**

Date

Name:

Date

Title: City Clerk

Title: Director of Engineering

Approval as to Form (City Attorney):



Approved as to Form:

Glenn Schwarzbach

Sr. Deputy City Attorney

Date

EXHIBIT A: SCOPE OF BASIC SERVICES

(4308 - FEMA - ALUM ROCK PARK VISITOR CENTER AND SERVICE ROAD)

(SCSJC93/PW745 – 8728 & SCSJE87/PW1112 - 8768)

The Contractor shall provide services and deliverables as set forth in this **Exhibit A**. The Contractor shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

Problem Definition and General Description of Project: Heavy rains from storm events in early 2017 resulted in significant damages to Alum Rock Service Road and Alum Rock Park Service Center, both of which are located in Alum Rock Park. Alum Rock Service Road, a one lane roadway, is located directly above Alum Rock Park Service Center.

Erosion from the downslope side of Alum Rock Service Road caused damage to the Alum Rock Visitor Center located at the bottom of the slope. The slope failure behind the Alum Rock Park Visitor's Center caused damage to the shed and part of the Visitor Center building, the 6-foot chain link fence, the 6-foot wood fence, and possibly the retaining wall(s). The extent of the damage to the retaining wall(s) is unknown until debris and soil is removed and structural evaluation can be accomplished. City will repair the building structures and remove associated debris and soil as part of a separate project.

The Mineral Springs Restroom, located about 1,500' northeast from the Visitor Center, incurred some damage. The damage to the restroom and the added soil and rock filling up around the backside of the restroom appeared to be caused by unstable soil and rocks washing down from the hillside during heavy rains.

Alum Road Service Road was damaged at one location and continues to be compromised pending the repair of the slope and repair/reconstruction of the road. The paved asphalt concrete road is a one lane narrow road with an approximate average width of 19' in the damaged area. An existing 10" ductile iron pipe runs under the service road and is the main water line for Alum Rock Park. Alum Rock Park Service Road is the only access road for larger maintenance and emergency response vehicles within the park. The downslope side of the roadway experienced edge of the pavement (adjacent to steep slope) failure. Observed failure is approximately 50' longitudinally and 20' deep adjacent to the edge of roadway.

The purpose of the project is to restore and provide the stability of the hillsides (i.e. the slope below the service road and upslope from the visitor center, and the slope behind and around the Mineral Springs restroom), restore the service roadway to its original function, and mitigate any other damages. The project includes project management, planning, environmental and permitting, design, construction, and project close out in conformance with FEMA's provisions, City of San Jose's policies and procedures, Caltrans, and other applicable local, state, and federal laws and regulations.

Repair of the existing visitor building and storage shed and removal of the debris and soil spilling over retaining wall are not part of this project, and will be done separately by the City. Repair of the Mineral Springs Restroom, and removal and re-grading of the loose soil and rocks behind and around the restroom to allow access for the repair work, will also be done separately by the City.

The General Scope of Work of the CONTRACTOR shall include the following:

- Project Management, Coordination, and Public Outreach
- Environmental Review and Permitting
- Site Investigation and Assessment.
- Structural Inspection and Analysis
- Geologic and Geotechnical Investigation and Report

- Topographic Site Survey
- Technical Memoranda, Design, and Construction Contract Documents
- Bid and Award
- Construction Management/Engineering Support
- Project Closeout

Task No. 1: Engineering Project Management, Coordination, and Public Outreach

- A. Services:** CONTRACTOR team members are expected to include the Contractor's Project Manager, project engineer(s), discipline engineers (if required), technical review and QA/QC leader, and subcontractors. CONTRACTOR shall designate a Project Manager, acceptable by the CITY, who shall be responsible for initiating the work, implementing the project management procedures and controls, and maintaining effective communications among the CONTRACTOR, CITY, and other agencies and organizations involved. CONTRACTOR shall designate a QA/QC leader who shall have the required technical experience to perform QA/QC for all engineering deliverables. The working interface between the CONTRACTOR and the CITY shall be defined by the following:

Subtask 1.1. Provide Engineering Project Management throughout the execution of the project to ensure that the project is on track and resources are being appropriately utilized.

Subtask 1.2. Furnish monthly Engineering Progress Reports based on the Engineering Work Plan. The Engineering Progress Reports shall include the following with the monthly invoice:

- A narrative report of specific milestones accomplished during the reporting period, problems encountered or anticipated, future goals or tasks to be scheduled for the next reporting period, and review dates and results of quality control programs, technical evaluations, and inspections related to the design or construction of the PROJECT.
- A cost report that shows, for each task, the current period and cumulative expenditures to date, the estimated cost to completion, the approved budget, and a comparison of the latter two to show variation. The cost report shall indicate, if all possible, a) the portion associated with repair/restoration of the site to the original conditions, and b) the portion associated with enhancement or improvement work beyond the repair and restoration.

Subtask 1.3. Provide to the City, administrative assistance with FEMA documentation and support throughout all project phases from preliminary site damage analysis or field investigation to project completion/close out.

Subtask 1.4. Perform on going Quality Assurance (QA) throughout the PROJECT, and provide critical QA/QC reviews for all the engineering deliverables before they are submitted to the City (i.e. technical memoranda, recommendations, reports, designs, drawings, specifications, or other deliverables).

Subtask 1.5. Manage and monitor the design review process throughout the project design (initial site assessment, preliminary design, 35%, 65%, 95%, and final design submittals); and ensure closing/following through comments and decisions at each design milestone prior to proceeding to the next one.

Subtask 1.6. Provide ongoing project coordination with various agencies and utility companies that may be encountered as part of the proposed improvements.

Subtask 1.7. Participate in Public Outreach efforts, including providing presentation materials, figures, and drawings. Presentation materials shall be provided in PDF, JPEG, AUTOCAD, and/or any Microsoft software programs as applicable.

B. Deliverables: CONTRACTOR shall provide the following:

1. Kick-off meeting agenda and minutes
2. Field visits
3. Utility Coordination
4. Invoices and financial updates
5. Table of Schedule in Critical Path Method that lists deliverable dates
6. Routine Communication via email, meeting minutes
7. Progress Meetings: A minimum of one meeting per month
8. Project Design Meetings: A minimum of one meeting at the completion of each design task.
9. Public Outreach Meeting: A minimum of one meeting.
10. All the deliverables required under each specific task, including Reports on Findings, Geotechnical Investigation and Recommendations, Topographic Survey, Technical Memoranda with Recommendations, Preliminary Designs, 35% Design Submittal, 65% Design Submittal, 95% Design Submittal, 100% Final Construction Contract Documents, Public Outreach materials, and other deliverables required during project bidding, project construction, and project closeout.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On Project Closeout, or as when required under the specific tasks.

Task No. 2: Environmental Review and Permitting

- A. Services:** The City has already completed all CEQA documentation and this project is Categorically Exempt. CONTRACTOR shall plan work so that regulatory requirements are met, assist the City in addressing regulatory requirements, coordinate with CALOES and FEMA, and assist in FEMA's preparation of environmental documents meeting NEPA requirements, and address schedule risks caused by Environmental and Permitting work.

In support of the scope of work outlined in Task No. 2 Environmental and Permitting, Rincon will provide support on NEPA environmental review and preparation of technical documents in support of the NEPA review. Based on preliminary information, Rincon understands that the project involves repairs at the visitor center and along the access road, and that none of the proposed project activity would occur in the bed or within the ordinary high water mark of the adjacent Penitencia Creek. Based on the location of the project activity and the small area of effect, Rincon believes the project is unlikely to result in adverse effects to environmental resources, and as such, will qualify as a Categorically Excluded Action under NEPA. Our proposed scope of work includes the preparation of a Record of Environmental Consideration (REC) and supporting technical documents that we assume will be required, as described below. Rincon assumes that an analysis and brief technical memorandum for biological resources and a standard cultural resources analysis will suffice. Because the project will not include any work within the bed or channel of Penitencia Creek, we do not anticipate that a U.S. Army Corps of Engineers (USACE) Section 404 permit or a Regional Water Quality Control Board (RWQCB) Section 401 certification will be required, nor do we anticipate impacts to federally-listed species under the jurisdiction of U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries

Service (NMFS). We expect that the California Department of Fish and Wildlife (CDFW) will require a Section 1602 Streambed Alteration Agreement (SAA) for work that is occurring on the slope below the road bed (an area that would be considered within the “top of bank” and/or riparian zone for CDFW jurisdiction), especially if there is any vegetation removal or trimming. In Rincon’s role in supporting environmental review, we will coordinate with the regulatory agencies and obtain all necessary permits and regulatory approvals for the project within the constraints of the assumptions outlined above and below, coordinate with CALOES, FEMA, review FEMA documents, and provide any required supporting documentation, for the completion of the NEPA environmental documents, write a memo analyzing water quality, BMPs and other supporting information in support of the hydrologic analysis (to be prepared by FCE) and monitor and assess schedule risk if Environmental and Permitting work becomes a critical path schedule task. Specific tasks anticipated to be completed in support of environmental review include the following:

NEPA Categorical Exclusion. Rincon will complete a REC for Categorically Excluded Actions to provide a record that the potential for impacts to the quality of the human environment has been considered in the decision to implement the proposed action, in accordance with NEPA and U.S. Department of Homeland Security Directive 023-01 and Instruction Manual 023-01-001-01. Where possible and appropriate, we will quantify potential adverse effects on the human environment; otherwise, we will describe those potential adverse effects qualitatively. In either case, we will provide evidence that the potential adverse effect would not be considered significant under NEPA. In addition to the analysis of biological and cultural resources described below, we will evaluate potential adverse effects on public health and safety and environmentally sensitive areas. We will also discuss project compliance with applicable Federal, State, and local laws. The evaluation of potential adverse effects will include an assessment of both the proposed action individually and the proposed action in conjunction with other cumulative actions.

Biological Resources Technical Memorandum. Rincon will conduct a biological resources adverse effects analysis to address question 8(B) of Appendix C (REC) of the NEPA Instruction Manual 023-01-001-01, Revision 01. The biological work will include a review of all pertinent background information, existing reports and biological resources databases to compile all existing information on biological resources at, and in the vicinity of the proposed work areas. Rincon will also conduct a biological resources reconnaissance survey to document the vegetation communities and habitats present within the proposed work areas. Based on the information compiled in the background review and collected during the reconnaissance survey, Rincon will conduct an impacts analysis and prepare a technical memorandum. The technical memorandum will outline the proposed project activity, detail the methods used in the evaluation, report a summary of the results from the background review and site visit, provide an analysis of the potential adverse effects to sensitive biological resources and provide recommendations for any avoidance and minimization measures that could reduce significant effects. If preliminary assumptions regarding level of impacts to Penitencia Creek require modifications, or if the proposed action will result in potentially adverse effects to federally-listed species, additional permitting could be required. The proposed technical memorandum as described above would be insufficient to support Clean Water Act (CWA) or Endangered Species Act (ESA) permitting. Should permitting and additional technical analysis be necessary, Contractor shall notify the City and shall not perform the additional work without the advance authorization by the City in writing.

CDFW Permitting. Rincon will prepare a CDFW SAA permit application and support agency consultation in the process of securing a SAA from CDFW for the proposed action. Based on the anticipated low level of disturbance and impacts to jurisdictional features, Rincon is assuming that CDFW will not require compensatory mitigation or the preparation of a Habitat Mitigation and Monitoring Plan (HMMP), and that mitigation would be limited to standard construction-phase BMPs. If preliminary assumptions regarding level of impacts to Penitencia Creek require modifications, CDFW may require additional technical analysis, compensatory mitigation, and/or

the preparation of a HMMP. Should the additional work be required, Contractor shall notify the City and shall not perform the additional work without the advance authorization by the City in writing.

Cultural Resources. Rincon will conduct a cultural resources study in accordance with the requirements of Section 106 of the National Historic Preservation Act (NHPA). This study will include the preparation of an Area of Potential Effects (APE) map, a records search for the APE and a 0.5-mile radius conducted at the Northwest Information Center (NWIC), a Sacred Lands File search with the Native American Heritage Commission, mailing of letters to Native Americans and local historical groups in accordance with Section 106, and a pedestrian survey of the APE. Alum Rock Park was founded in 1872; however, the park has previously been determined ineligible for listing in the National Register of Historic Places by the State Historic Preservation Office (SHPO) and requires no further management consideration under Section 106. If other cultural resources are identified during the records search or survey, Rincon will request a budget augmentation to address those resources. Upon completion of the technical study, Rincon will submit one electronic copy of the draft cultural resource study, including copies of applicable reference materials, in PDF and/or Word format(s). We will also assist FEMA in drafting a letter requesting concurrence from the SHPO with the anticipated finding that the project would not adversely affect historic properties.

Water Quality Analysis. Fall Creek Engineering will assess the potential impacts the project would have on water quality, such as during construction and post construction activities. The analysis is qualitative and identifies what potential impacts could occur as result of the project and what measures will be taken to reduce the impacts to less than a significant impact. The primary water quality impacts would be related to erosion and sedimentation and from hydraulic fluid or fuel from heavy vehicles. Fall Creek Engineering will outline what measures should be in place to mitigate potential impacts.

CONTRACTOR shall:

- Subtask 2.1 NEPA Categorical Exclusion
 - Complete a Record of Environmental Consideration (REC) for NEPA Categorically Excluded Actions
- Subtask 2.2 Biological Resources
 - a. Review all pertinent background information, existing reports and biological resources databases and consult with FEMA and Santa Clara Valley Habitat Agency (SCVHA) and Habitat Plan
 - b. Conduct a biological resources reconnaissance survey
 - c. Prepare biological technical report and other documentation as required by SCVHA/FEMA
 - d. Prepare a California Department of Fish and Wildlife (CDFW) SAA permit application and support agency consultation
 - e. If required by CDFW and directed by the City, perform jurisdictional delineation
 - f. If required by CDFW and other regulatory agencies and directed by the City, prepare additional technical analysis, compensatory mitigation, and/or prepare a Habitat Mitigation and Monitoring Plan (HMMP)
- Subtask 2.3 Cultural Resources – If required and directed by the City, conduct a cultural resources study in accordance with the requirements of Section 106 of the National Historic Preservation Act (NHPA)
- Subtask 2.4 Water Quality Analysis - Complete water quality analysis

Subtask 2.5 If required and directed by the City, perform the Environmental Review and Permitting as described under Subtasks 2.1 to 2.4 for the work on the slope behind and around the Mineral Springs Restroom.

CONTRACTOR may not proceed with any specific work under Task 2 unless it is authorized in advance from the City's Project Manager in writing.

B. Deliverables: CONTRACTOR shall provide the following:

1. Report of findings on environmental and biological assessments
2. Record of Environmental Consideration (REC) for NEPA Categorically Excluded Actions, including other regulatory and/or supporting documentation for FEMA's preparation of NEPA environmental documents
3. Biological technical report for SCVHA/FEMA, and other documentation as required by SCVHA/FEMA
4. California Department of Fish and Wildlife (CDFW) SAA permit application
5. Additional technical analysis, compensatory mitigation, and/or prepare a Habitat Mitigation and Monitoring Plan (HMMP) if required and directed by the City.
6. Cultural resources study if required and directed by the City.
7. Water Quality Analysis Technical Memorandum.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On or before the start of the 65% Design Plans and Specifications, or twelve (12) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 3: Site Investigation, Damage Assessment, and Recommendations

A. Services: CONTRACTOR shall obtain field information needed for structural, geotechnical, and civil design; investigate and resolve specific design issues; and collect data needed for the preparation of technical memoranda, design, and construction contract documents.
CONTRACTOR shall:

Subtask 3.1. Review all pertinent technical reports and information, including: bare-earth LIDAR/ aerial photographic/topographic base map, GIS, Parcel Maps, Geology Maps, and any additional data made available from the City of San Jose.

Subtask 3.2. Conduct site investigation and damage assessment of the service roadway, the downslope adjacent to roadway and the slope behind the retaining wall(s) and other pertinent site features.

Subtask 3.3. Perform structural inspection, damage assessment, testing and engineering analysis of the existing retaining wall(s) at the Visitor Center area.

Subtask 3.4. Provide an evaluation of the drainage system's condition and capacity. To complete this task, CONTRACTOR shall:

- a. Complete a Hydrologic and Hydraulic (HH) Analysis to determine if the existing drainage system had the appropriate capacity.

- b. Identify the drainage areas to each of the drainage inlets and culverts and determine if the capacity of the inlet and pipe are adequate to safely convey the required design storm events.
- c. Inspect the condition of the drainage areas, drainage conveyance system, and drainage discharge points for condition and potential erosion and hillside stability.
- d. Prepare a report documenting CONTRACTOR's methodology and findings as well as present recommendations for drainage system upgrades.

Subtask 3.5. Provide an evaluation of the existing ductile iron water pipe located at the service access road, and check the pipe for condition and stability, and provide written recommendations for improvements, if necessary

Subtask 3.6. Provide technical memoranda and reports of findings, including discussion about opportunities and constraints throughout the site.

Subtask 3.7. Provide technical memoranda with design recommendations of the proposed work based on value engineering (i.e. analysis of construction costs and schedules) and in conjunction with the geotechnical recommendations where applicable.

Subtask 3.8. If required and directed by the City, perform the following work for the Mineral Springs Restroom area: a) perform site investigation, inspect the drainage condition for potential erosion and hillside stability, and perform damage assessment for the restroom and the slope behind and around the Mineral Springs Restroom; b) provide recommendations for structural repairs, if any, to the Mineral Springs Restroom; c) provide drainage and design recommendations to restore/provide the stability of the slope behind and around the Mineral Springs Restroom in conjunction with the geotechnical recommendations.

B. Deliverables: CONTRACTOR shall provide the following:

1. Technical memoranda of site assessment and findings, with the preliminary recommendations of the proposed work associated with the service roadway, the downslope from the roadway and the slope behind retaining wall, landslide or erosion hazard mitigation, fencing, and other pertinent features.
2. Technical memoranda for the structural integrity of the existing retaining wall(s) with recommendations.
3. Technical memoranda for the drainage system and upgrades.
4. Technical memoranda for the ductile water main with recommendations.
5. Cost and schedule analysis, engineering analysis, calculations, conceptual sketches and drawings, and test reports.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On or before the start of the Preliminary Design Plans and Specifications, or four (4) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 4: Geologic and Geotechnical Investigation and Report

- A. Services:** CONTRACTOR shall conduct a geotechnical investigation that will include an examination of the soil type, surficial geologic conditions, slope stability, and erosion control. CONTRACTOR shall:

Subtask 4.1. Perform a soil investigation including the collection of soil samples through geotechnical borings and test pits, and laboratory analysis of soil properties. CONTRACTOR will collect soil samples and data using appropriate field equipment, mechanical drilling equipment and/or other human powered core sampling devices. Prior to any drilling or excavation on site, CONTRACTOR shall ensure compliance with all environmental and permitting requirements, and conduct utility locating.

Subtask 4.2. Prepare a Geotechnical Investigation Report, summarizing the testing methodologies, results of laboratory analysis, strength (including unconfined compression, triaxial or direct shear), density and moisture content, grain size analysis, and Atterberg limits expansion index. Report will include recommendations for the project, compaction of fill, design of localized slope stabilization, and design of subsurface structures including structural foundations and earth retaining structures. Report will also address any landslide or erosion hazards identified during the investigation, and include design of restoration of disturbed slope area. Recommendations for the structural stabilization of the slopes may include retaining walls, soil nails, a combination of both, or other similar improvement to provide structural stability. Recommendations for the restoration of disturbed slope area may include gabion, soil nails, bio degradable fiber rolls, netting, compost, permanent hydro seed materials, or other similar improvement to provide erosion control.

Subtask 4.3. If required and directed by the City, perform the soil investigation as described under Subtask 4.1 for the slope behind and around the Mineral Springs Restroom.

Subtask 4.4. If required and directed by the City, prepare a Geotechnical Investigation Report with recommendations as described under Subtask 4.2 for the slope behind and around the Mineral Springs Restroom. Also provide recommendations on how City can safely remove filled soil and rock to allow safe access behind and around the restroom for the restroom repair work.

B. Deliverables: CONTRACTOR shall provide the following:

1. Complete Draft Geotechnical Investigation Report(s), including conceptual drawings, sketches, and schematics as required.
2. Complete Final Geotechnical Investigation Reports, including conceptual drawings, sketches, and schematics as required. Final Geotechnical Investigation Report(s) shall be signed, dated, and stamped by CONTRACTOR and the Geotechnical Engineer.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On or before the start of the Preliminary Design Plans and Specifications, or four (4) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 5: Topographic Survey

A. Services: CONTRACTOR shall provide a comprehensive topographic survey of the entire project limits, which include the failed slopes and slide areas, and the areas surrounding the site. The entire project limits shall extend a minimum of 50 feet beyond the extent of the failed areas in all directions, and shall include the areas in-between the failed areas and any areas surrounding that are pertinent to the design. CONTRACTOR shall perform work in compliance with the following requirements:

- Using a traditional terrestrial (ground) survey methods.
- The topographic survey work shall conform to the California Department of Transportation, Office of Land Surveys, Surveys Manual.

- Working in safe manner, and ensuring the safety of all staff working at the site.
- Using appropriate Personal Protective Equipment (PPE).
- Use appropriate safety precautions when conducting the survey, particularly within the limits of the failed slopes, slide areas and/or channel areas.

CONTRACTOR shall:

Subtask 5.1. Prepare preliminary base map using available LIDAR information to determine the preliminary schematic design and to determine areas where detailed survey is required for design, grading and site improvements.

Subtask 5.2. Provide traditional terrestrial topography of the pavement failure area, the hillside failure areas, and the areas that are pertinent to the design, grading and site improvements. The traditional terrestrial topography shall extend ten (10) feet longitudinally (parallel to the roadway) and fifty (50) feet transversely (perpendicular to the roadway) beyond the extent of the failure or design areas. The topography shall comply with the following requirements:

- a. Topography shall include planimetric features for the location of edge of roadways, edge of dirt turnabouts, AC pavements, berms, trees, utilities (including vaults, poles, etc.), building footprints, structure footprints, fencing, storm structures including area drain inlets, storm outfalls, culverts, and other pertinent existing site features.
- b. The survey shall identify all property lines that exist within the project limits.
- c. Spot elevations shall be shown approximately every 10 feet and at grade breaks, and to an accuracy of 0.1' (one tenth of a foot) for bare earth and 0.01' (one hundredth of a foot) for paved surfaces.
- d. Develop break lines and use spot elevations to create a Digital Terrain Model (DTM) and generate one (1) foot contour elevations.
- e. Develop one continuous alignment of the centerline of the roadway based on a best-fit average of road edge data collected along the entire limits.
- f. Topography shall be produced at a scale from 1" = 10' to 1" = 20' as required for clarity and for the design.
- g. The survey shall be based on horizontal and vertical controls established by CONTRACTOR to include the entire area limits. Coordinates, bearings, distances, and elevations shall be based on the NAD83 Horizontal Datum and the NAVD88 Vertical Datum.
- h. All maps shall conform to National Map Accuracy Standards. All mapping files shall be delivered with standard layers and symbols that conform to the National CAD Standards, and shall include a legend and abbreviation table describing the layers and symbols used.
- i. Cross-sections will be taken every ten (10) feet on center at each slide and slope failure area plus ten (10) feet longitudinally beyond the slide/failure areas.
- j. Cross-section limit shall extend transversely to cover the perimeter limits of the slide area, and fifty (50) feet beyond the perimeter limits of the slide or failure area.

Subtask 5.3. If required and directed by the City, perform the Topographic Survey as described under Subtasks 5.1 and 5.2 for the work on the slope behind and around the Mineral Springs Restroom.

B. Deliverables: CONTRACTOR shall provide the following:

Form Name: Standard Consultant Agreement (Capital Projects/FEMA)
Exhibit A – Scope of Basic Services

Page: 9 of 21

Form/File No.: 1443725

City Attorney Form Approval Date:

1. One (1) DWG file in AutoCAD Civil 3D 2015 format containing all planimetric and topographic data including notation of horizontal and vertical datums referenced, table of survey control, surface contours, spot elevations, cross-sections, alignment, trees, structures, invert information, walkways, fences, roadways, and utility information.
2. One (1) DWG file in AutoCAD Civil 3D 2015 format containing the digital terrain model consisting of break lines and mass points referenced to the ground control survey data set by CONTRACTOR.
3. Original field notes, and a scanned copy in PDF format, of DIP Sheets (DIP forms to be provided by City) for storm outfalls, culverts, and area drain inlets.
4. A set of photos in raw JPEG format for each storm facility and utility surveyed.
5. Base maps and cross section sheets for the design.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On or before the start of the Preliminary Design Plans and Specifications, or four (4) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 6: Preliminary Design Plans and Specifications

A. Services: CONTRACTOR shall develop and prepare the Preliminary Drawings and Specifications based on the results of the site investigation, geotechnical investigation, topographic surveys, recommendations, and technical memoranda completed in the previous tasks. The purpose of the Preliminary Design is to provide the City with a clear understanding of the general scope, cost, and schedule of project construction and any associated project risks. The Preliminary Drawings and Specifications shall include sufficient layouts and dimensions to capture the general magnitude of construction, major project components, magnitude of construction cost and schedule, and to help identify any major potential project risks or design flaws (i.e. constructability, utility conflicts, and environmental and permitting concerns).

CONTRACTOR shall:

Subtask 6.1. Prepare the Preliminary Drawings. The Preliminary Drawings shall be prepared in AUTOCAD and shall include design parameters and criteria, and shall identify major design components, including structural stabilization of the downslope from the roadway and the slope behind the retaining wall, re-construction of service roadway, road drainage system, water main, retaining wall(s), erosion control measures, and other critical project components. The Preliminary Drawings shall include:

- a. Cover Sheet, Index Sheet, General Notes and Legends Sheet, Site and Location Map Sheet
- b. Site Plan Sheets to scale (showing existing topography and contours, and using base maps developed under Task 5)
- c. Improvement Plan sheets to scale (showing proposed improvements, existing and new contours, and using base maps developed under Task 5).
- d. Profile Sheets to scale (showing profiles of proposed improvements, including existing ground surface profile)
- e. Cross Section sheets to scale (showing appropriate cross sections of the proposed improvements, including the existing ground surface)

Subtask 6.2. Prepare the Preliminary Specifications. The Preliminary Specifications shall include specifications for major design components, specifying construction materials, methods and procedures, approximate quantities, and measurement and payment methods.

Subtask 6.3. Prepare Opinion of Probable Construction Costs (OPCC).

Subtask 6.4. Prepare Proposed Construction Schedule and Duration

Subtask 6.5. If required and directed by the City, prepare the Preliminary Design Plans and Specifications as described under Subtasks 6.1 to 6.4 for the work on the slope behind and around the Mineral Springs Restroom.

B. Deliverables: CONTRACTOR shall provide the following:

1. A set of Preliminary Drawings in AUTOCAD and PDF that include all the drawing sheets required under this task.
2. Opinion of Probable Construction Costs (OPCC). OPCCs shall be based on Association for the Advancement of Cost Engineering (AACE) Standards.
3. Proposed Preliminary Schedule for Construction in Microsoft Project and PDF.
4. Preliminary Specifications in WORD and PDF.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ Two (2) weeks before the start of the 35% Design Plans and Specifications, or six (6) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 7: 35% Design Plans and Specifications

- A. Services:** CONTRACTOR shall develop the 35% Design Submittal and shall prepare the 35% Drawings and Specifications based on the results of the Preliminary Design, the City's review and comments, and any decisions made. The purpose of the 35% Design Submittal is to provide the City with a clear and complete picture of construction of all major and critical project components. The 35% Design Submittal shall have captured/resolved all previously made design comments/decisions, and resolved the major potential project risks (i.e. constructability, and environmental and permitting concerns). The 35% Design Submittal shall include sufficient layouts, dimensions and details to show clearly the scope of all major and critical project components, and to provide the more refined cost and schedule estimates of the project construction.

CONTRACTOR shall:

Subtask 7.1. Prepare the 35% Drawings. The 35%% Drawings shall be a further development from the Preliminary Drawings, and shall include complete layout of the structural stabilization of the downslope from the roadway and the slope behind the retaining wall, re-construction of service roadway, road drainage system, water main, retaining wall(s), erosion control measures, and all pertinent and critical site features. The 35% Drawing shall include:

- a. Cover Sheet and General Notes, Legends and Detail Sheet

- b. Site Plan Sheets to scale (showing existing topography developed under Task 5)
- c. Improvement Plan sheets to scale with accompanying general details (showing proposed improvements, proposed grading, plus other proposed design and pertinent features, including the existing topography developed under Task 5).
- d. Profile Sheets to scale with accompanying general details (showing profiles of the proposed improvements, including the existing ground surface profile).
- e. Cross Section sheets to scale with accompanying general details (showing appropriate cross sections of the proposed improvements, including the existing ground surface).
- f. Major utility conflicts and resolutions, if any.
- g. Major environmental and permitting concerns and resolutions, if any.

Subtask 7.2. Prepare the 35% Specifications. The 35% Specifications shall be a further development from the Preliminary Specifications and shall conform to City of San Jose and Caltrans format. The 35% Specifications shall include the complete specifications of all design components shown in the 35% Drawings. The 35% Specification shall specify fully the construction materials, detailed methods and procedures, complete quantities, and measurement and payment methods.

Subtask 7.3. Prepare the 35% Engineer's Estimate and Schedule of Quantities.

Subtask 7.4. Prepare refined Proposed Construction Schedule and Duration.

Subtask 7.5. Coordinate with franchised utilities to relocate utility facilities affected by the construction of improvements. This scope is limited to coordination and excludes design and details of any utility relocation.

Subtask 7.6. Coordinate and resolve with regulatory agencies major environmental-related design conflicts.

Subtask 7.7. Perform Quality Assurance / Quality Control (QA/QC) on deliverables to CITY in accordance with CONTRACTOR's standard procedures and meeting the requirements of this Contract.

Subtask 7.8. If required and directed by the City, prepare the 35% Drawings and Specifications as described under Subtasks 7.1 to 7.7 for the work on the slope behind and around the Mineral Springs Restroom.

B. Deliverables: CONTRACTOR shall provide the following:

- 1. A copy of the 35% Drawings in AUTOCAD and PDF that include all the drawing sheets required under this task.
- 2. Six (6) 11"x17" Hard Copies, and Two (2) 24"x36" Hard Copies of the 35% Drawings.
- 3. A copy of the 35% Specifications in Microsoft Word and PDF.
- 4. Six (6) 8 1/2" x 11" Hard Copies of the 35% Specifications.
- 5. A copy of the 35% Engineer's Estimate and Schedule of Quantities in Microsoft Excel and PDF
- 6. A copy of the Project Schedule and Duration in Microsoft Project and PDF.

7. Documentation of any coordination or correspondence with franchised utilities in PDF within 3 business days of occurrence related to the 35% design decisions.
8. Documentation of any coordination or correspondence with FEMA and regulatory agencies in PDF within 3 business days of occurrence related to the 35% design decisions.

C. Completion Time: The CONTRACTOR must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:_____.
- ☒ One (1) week before the start of the 65% Design Plans and Specifications, or twelve (12) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 8: 65% Design Plans and Specifications

A. Services: CONTRACTOR shall develop the 65% Design Submittal and shall prepare the 65% Drawings and Specifications based on the results of the 35% Design Submittal, the City's review and comments, and any decisions made. The 65% Design Submittal shall be a fairly complete set of construction contract documents that would be almost biddable and buildable. It should provide the City with a clear and complete picture of the entire project scope, cost, and schedule of project construction. The 65% Design Submittal shall have captured/resolved all previously made design comments/decisions, and resolved all remaining potential project risks (i.e. constructability, utility conflicts, and environmental and permitting concerns). The 65% Design Submittal shall include complete layouts, dimensions and details to show clearly the entire scope, cost, and schedule of the project construction.

CONTRACTOR shall:

1. Subtask 8.1. Prepare the 65% Drawings. The 65%% Drawings shall be a further development from the 35% Drawings, and shall include complete layout and details of the structural stabilization of the downslope from the roadway and the slope behind the retaining wall, re-construction of service roadway, road drainage system, water main, retaining wall(s), erosion control measures, and all pertinent project components. The 65% Drawing shall include:
 - a. Cover Sheet and General Notes, Legends and Detail Sheet
 - b. Site Plan Sheets to scale.
 - c. Improvement Plan sheets to scale showing the complete work with complete details.
 - d. Profile Sheets to scale showing the complete work with complete details.
 - e. Cross Section sheets to scale showing the complete work with complete details.
 - f. Traffic Control Plans and Details
 - g. Special details and sections of the entire project scope.
 - h. Remaining utility conflicts and resolutions, if any.
 - i. Remaining environmental and permitting concerns and resolutions, if any.

Subtask 8.2. Prepare the 65% Specifications. The 65% Specifications shall be a further development from the 35% Specifications and shall conform to City of San Jose and Caltrans

format. The 65% Specifications shall include the complete specifications of the entire project construction.

Subtask 8.3. Incorporate the City's front end specifications (to be prepared by City) into the 65% Specifications.

Subtask 8.4. Prepare and update the Engineer's Estimate and the Schedule of Quantities.

Subtask 8.5. Prepare further refined Project Construction Schedule and Duration.

Subtask 8.6. Coordinate and resolve with franchised utilities any remaining utility conflicts, and including design resolutions, and design and details of any utility relocation.

Subtask 8.7. Coordinate and resolve with regulatory agencies any remaining environmental-related design conflicts.

Subtask 8.8. Perform Quality Assurance / Quality Control (QA/QC) on deliverables to CITY in accordance with CONTRACTOR's standard procedures and meeting the requirements of this Contract.

Subtask 8.9. If required and directed by the City, prepare the 65% Drawings and Specifications as described under Subtasks 8.1 to 8.8 for the work on the slope behind and around the Mineral Springs Restroom.

B. Deliverables: CONTRACTOR shall provide the following:

1. A copy of the 65% Drawings in AUTOCAD and PDF that include all the drawing sheets required under this task.
2. Six (6) 11"x17" Hard Copies, and Two (2) 24"x36" Hard Copies of the 65% Drawings.
3. A copy of the 65% Specifications in Microsoft Word and PDF.
4. Six (6) 8 1/2" x 11" Hard Copies of the 65% Specifications.
5. A copy of the updated Engineer's Estimate and Schedule of Quantities in Microsoft Excel and PDF
6. A copy of the Project Schedule and Duration in Microsoft Project and PDF.
7. Documentation of any coordination or correspondence with franchised utilities in PDF within 3 business days of occurrence related to the 65% design decisions.
8. Documentation of any coordination or correspondence with FEMA and regulatory agencies in PDF within 3 business days of occurrence related to the 65% design decisions.

C. Completion Time: The CONTRACTOR must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____.
- ☒ One week before the start of the 95% Design Plans and Specifications, or nineteen (19) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 9: 95% Design Plans and Specifications

- A. Services:** CONTRACTOR shall develop the 95% Design Submittal and shall prepare the 95% Drawings and Specifications based on the results of the 65% Design Submittal, the City's review and comments, and any decisions made. The 95% Design Submittal shall be a complete set of construction contract documents that would be biddable and buildable, except for some editorial corrections, typos and drafting errors. The 95% Design Submittal shall have captured/resolved all previously made design comments/decisions and shall have resolved completely all the project potential risks.

CONTRACTOR shall:

Subtask 9.1. Prepare the 95% Drawings. The 95% Drawings shall be a final development from the 65% Drawings, and shall be complete set of drawings, except for minor editorial corrections, typos and/or drafting errors

Subtask 9.2. Prepare the 95% Specifications. The 95% Specifications shall be a final development from the 65% Specifications, and shall be complete set of specifications, except for minor editorial corrections, typos and/or errors.

Subtask 9.3. Prepare and update the Engineer's Estimate and Schedule of Quantities.

Subtask 9.4. Prepare the Project Construction Schedule and Duration.

Subtask 9.5. Perform Quality Assurance / Quality Control (QA/QC) on deliverables to CITY in accordance with CONTRACTOR's standard procedures and meeting the requirements of this Contract.

Subtask 9.6. If required and directed by the City, prepare the 95% Drawings and Specifications as described under Subtasks 9.1 to 9.5 for the work on the slope behind and around the Mineral Springs Restroom.

- B. Deliverables:** CONTRACTOR shall provide the following:
1. A copy of the 95% Drawings in AUTOCAD and PDF.
 2. Six (6) 11"x17" Hard Copies, and Two (2) 24"x36" Hard Copies of the 95% Drawings.
 3. A copy of the 95% Specifications in Microsoft Word and PDF.
 4. Six (6) 8 1/2" x 11" Hard Copies of the 95% Specifications.
 5. A copy of the updated Engineer's Estimate and Schedule of Quantities in Microsoft Excel and PDF
 6. A copy of the Project Schedule and Duration in Microsoft Project and PDF.

- C. Completion Time:** The CONTRACTOR must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:_____.
- ☒ One week before the start of the Final Design Plans and Specifications, or twenty four (24) weeks after receipt of the Notice to Proceed (NTP) for this Agreement, whichever is sooner.

Task No. 10: Final Design Plans and Specifications

- A. Services:** CONTRACTOR shall develop the 100% Design Submittal and shall prepare the 100% Drawings and Specifications based on the results of the 95% Design Submittal, the City's review and comments, and any decisions made. The 100% Design Submittal shall be a complete set of construction contract documents that would be biddable and buildable, free of errors, and ready for signatures.

CONTRACTOR shall:

Subtask 10.1. Prepare the Final Drawings. The Final Drawings shall be free of errors; and shall be signed, dated, and stamped by CONTRACTOR, and ready for City's acceptance signatures.

Subtask 10.2. Prepare the Final Specifications. The Final Specifications shall be free of errors; and shall be signed, dated, and stamped by CONTRACTOR, and ready for City's acceptance signatures.

Subtask 10.3. Prepare the Final Engineer's Estimate and Schedule of Quantities.

Subtask 10.4. Prepare the Final Project Construction Schedule and Duration.

Subtask 10.5. Perform Quality Assurance / Quality Control (QA/QC) on deliverables to CITY in accordance with CONTRACTOR's standard procedures and meeting the requirements of this Contract.

Subtask 10.6. If required and directed by the City, prepare the Final Drawings and Specifications as described under Subtasks 10.1 to 10.5 for the work on the slope behind and around the Mineral Springs Restroom.

- B. Deliverables:** CONTRACTOR shall provide the following:
1. A copy of the signed and stamped Final Drawings in AUTOCAD and PDF.
 2. Six (6) 11"x17" Hard Copies, and Two (2) 24"x36" Hard Copies of the Final Drawings.
 3. A copy of the signed and stamped Final Specifications in Microsoft Word and PDF.
 4. Six (6) 8 1/2" x 11" Hard Copies of the Final Specifications.
 5. A copy of the Final Engineer's Estimate and Schedule of Quantities in Microsoft Excel and PDF
 6. A copy of the Project Schedule and Duration in Microsoft Project and PDF.
- C. Completion Time:** The CONTRACTOR must complete the services and deliverables for this task in accordance with whichever one of the following time is marked

- ☐ On or before the following date:_____.

- ☒ On or before twenty eight (28) weeks after receipt of the Notice to Proceed (NTP) for this Agreement.

Task No. 11: Bid and Award

- A. Services:** During the construction contract bid period, the City is likely to receive questions and general inquiries from general contractors, subcontractors, and equipment and material manufacturer's representatives on specific aspects of the construction documents and the Project. CONTRACTOR shall participate and assist the City during the Project Bidding and Award of the construction contract.

CONTRACTOR shall:

Subtask 11.1. Attend a pre-bid conference including site visit.

Subtask 11.2. Respond to bidders' questions within 48 hours of receiving the questions.

Subtask 11.3. Prepare addenda as required by contractor's bid questions and/or as directed by the City.

A. Deliverables:

1. Pre-bid meeting minutes in electronic format.
2. Written responses to bidders' questions, including any corresponding sketches, in electronic format.
3. Draft and final addenda, in electronic format. The final addenda shall be signed, dated, and stamped by CONTRACTOR.

- C. Completion Time:** The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following times is marked:

- ☐ On or before the following date: _____.
- ☒ On or before thirty seven (37) weeks after receipt of the Notice to Proceed (NTP) for this Agreement.

Task No. 12: Construction Management/Engineering Support

- A. Services:** During construction, CONTRACTOR shall provide construction management support and construction engineering support to the CITY who manages the construction contract.

CONTRACTOR shall:

Subtask 12.1. Attend one pre-construction meeting with CITY and Contractor, prepare meeting minutes, and provide written responses to unanswered questions from the meeting.

Subtask 12.2. Attend construction progress meetings with CITY and Contractor, and prepare meeting minutes.

Subtask 12.3. As requested by the City, review construction contractor's submittals and provide a written response for each submittal with a review stamp disposition within one week of receiving the submittal.

Subtask 12.4. As requested by the City, review construction contractor's Requests for Information (RFI's) and provide a written response within 72 hours of receiving the RFI.

Subtask 12.5. As requested by the City, review construction contractor's Construction Schedules and provide a response for each review within one week of receiving the schedule.

Subtask 12.6. Conduct site visits when required by CITY and provide CITY with recommendations to resolve construction issues within one week after the site visit.

Subtask 12.7. As requested by the City, assist CITY with the Contract Change Orders (CCO's) by reviewing and commenting on CITY's prepared CCO's, including providing engineering drawings and cost estimates for the changes. CCO's may be initiated by the CITY or requested by the Contractor.

Subtask 12.8. As requested by the City, provide specialty inspections for structural work (to be performed by CONTRACTOR's Licensed Structural Engineer).

Subtask 12.9. Provide special inspections for welding and steel reinforcing, as required by CITY. It is assumed that five days of inspections will be completed for the project.

Subtask 12.10. Complete a site layout survey (construction staking) that will mark the location of the proposed site improvements (to be performed by CONTRACTOR's Licensed Surveyor).

Subtask 12.11. Provide geotechnical support and provide recommendations during construction of retaining structures and structural stabilization of the slope and slide areas and inspect all geotechnical related improvements (to be performed by CONTRACTOR's licensed Geotechnical Engineer and Engineering Geologist).

Subtask 12.12. Construction Phase Compliance Monitoring. Rincon will provide biological, cultural and Native American monitors during the construction phase of the project, to meet project conditions and mitigation measures. The scope of work for construction phase compliance monitoring is entirely dependent on the specific project conditions outlined in project approval documents and permits, and on the duration of construction activity, especially ground disturbing activity. As such, a compliance monitoring scope of work would typically be developed only after all project permits and conditions had been finalized and the construction schedule had been established. In the absence of this information, Rincon has made some general assumptions about the expected project conditions and duration of construction activity that will require compliance monitoring. Rincon assumes that the project will require standard preconstruction surveys for biological resources (one biologist for one day), biological monitoring for all vegetation removal/trimming and initial grading, and cultural and Native American monitoring for all ground disturbing activity. Based on a project of this size, Rincon assumes not more than five (5) days of biological monitoring (one biological monitor) and not more than eight (8) days of Cultural Resource monitoring (one archeologist and one Native American monitor).

Subtask 12.13. If required and directed by the City, provide construction management support and construction engineering support as described under Subtasks 12.1 to 12.12 for the work on the slope behind and around the Mineral Springs Restroom.

B. Deliverables:

1. Pre-construction meeting minutes, and written responses to unanswered questions from the meeting, in electronic format.

2. Progress meeting minutes, in electronic format.
3. Written response for each submittal with a review stamp disposition, in electronic format.
4. Written response to each Contractor's Request for Information (RFI), in electronic format.
5. Written response to each review of Contractor's Construction Schedule, in electronic format.
6. Written reports with recommendations to resolve construction field issues, in electronic format.
7. Signed and stamped engineering drawings for CCOs in both hard copies and electronic format, and cost estimates for CCOs in electronic format.
8. Written reports of specialty inspections and geotechnical field supports, in electronic format.
8. Written reports of environmental and biological monitoring during construction, in electronic format.

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____.
- ☒ Nineteen (19) weeks from when the City awards the construction contract.

Task No. 13: Construction and Project Close Out Assistance

A. Services: CONTRACTOR shall provide assistance services to CITY for both City and FEMA project close out documents. CONTRACTOR shall:

Subtask 13.1. Provide to the City, administrative assistance with FEMA documentation and support through construction and project completion/close out.

Subtask 13.2. Assists City's project team during final project walk-through and in developing final punch list.

Subtask 13.3. Review final record drawings submitted by the contractor and prepare draft recommendation to the CITY.

Subtask 13.4. Analyze and provide recommendations on potential claims as requested by the City. Prepare draft of final project report for the City or FEMA, as directed by the City.

B. Deliverables: CONTRACTOR shall provide the following:

1. Construction punch list
2. Final record drawings recommendation
3. Analysis and recommendations on any potential claims
4. Draft final project report
5. Other FEMA documentation during construction and project close out as required by FEMA of the CITY

C. Completion Time: The Contractor must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date: _____
- ☒ On or before twenty eight (28) weeks from when the City awards the construction contract.

EXHIBIT A.1 SCHEDULE OF COMPLETION

1. No schedule extension will be allowed unless approved in advance in writing by the City.
2. City's Project Manager and Contractor may agree to modify the Project schedule specified for Contractor's performance as an administrative modification to the Agreement.
3. Contractor will coordinate services with the City to provide the timeline of all tasks and subtasks including the site visits, document review, meetings and deliverables. The approved Project schedule will be monitored monthly.
4. Contractor will commence tasks 1 through 11 listed in Exhibit A of this Agreement upon receipt of the Notice to Proceed (NTP) for this Agreement. Contractor will commence tasks 12 through 13 of this Agreement upon City's award of the construction contract of this Project to the construction contractor.
5. Project Schedule—Contractor will complete the Services as listed in Exhibit A of this Agreement per the schedule provided below:

Task	Description	Duration from NTP
1	Project Management, Coordination, and Public Outreach Services	Duration of Agreement
2	Environmental Review and Permitting	12 weeks
3	Site Investigation, Damage Assessment, and Recommendations	4 weeks
4	Geologic and Geotechnical Investigation and Report	4 weeks
5	Topographic Survey	4 weeks
6	Preliminary Design Plans and Specifications	6 weeks
7	35% Design Plans and Specifications	12 weeks
8	65% Design Plans and Specifications	19 weeks
9	95% Design Plans and Specifications	24 weeks
10	Final Design Plans and Specifications	28 weeks
11	Bid and Award	37 weeks
12	Construction Management Support and Engineering Support	19 weeks from City's award of the construction contract
13	Construction Contract and Project Closeout Assistance	28 weeks from City's award of the construction contract

6. Project Delays—The Contractor will make all reasonable efforts to comply with the Project schedule presented in Exhibit A.1 of this Agreement. In the event the Project schedule will be delayed, Contractor will notify the City as soon as possible, providing the reason why, the length of the delay, and a description of the actions being taken to address the delay. In the event Contractor is delayed in performance of its services by circumstances beyond its control, City may in its discretion grant a reasonable adjustment in the Schedule of Completion.

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EXHIBIT B: Budget Schedule/Compensation Rates

Section 1 – Compensation Table

Part 1 - Compensation for Services and Deliverables			
Column 1		Column 2	Column 3
Task Nos. from Exhibit A		Maximum Actual Costs Allocable to Task	Portion of Fixed Fee Payable Upon Completion of Task
Task 1	Subtask 1.1	\$13,679	\$1,368
	Subtask 1.2	\$6,426	\$643
	Subtask 1.3	\$12,884	\$1,288
	Subtask 1.4	\$8,323	\$832
	Subtask 1.5	\$7,471	\$747
	Subtask 1.6	\$5,554	\$555
	Subtask 1.7	\$9,809	\$981
Task 1 Subtotal		\$64,146	\$6,415
Task 2	Subtask 2.1	\$3,682	\$368
	Subtask 2.2		
	2.2a	\$4,484	\$448
	2.2b	\$1,759	\$176
	2.2c	\$4,783	\$478
	2.2d	\$2,903	\$290
	2.2e	\$4,340	\$434

Task 2 (cont.)	2.2f	\$8,404	\$840
	Subtask 2.3	\$5,920	\$592
	Subtask 2.4	\$1,595	\$160
	Subtask 2.5	\$4,112	\$412
Task 2 Subtotal		\$41,994	\$4,199
Task 3	Subtask 3.1	\$7,529	\$753
	Subtask 3.2	\$5,417	\$542
	Subtask 3.3	\$7,850	\$785
	Subtask 3.4		
	3.4a	\$3,441	\$344
	3.4b	\$1,871	\$187
	3.4c	\$763	\$76
	3.4d	\$2,611	\$261
	Subtask 3.5	\$3,743	\$374
	Subtask 3.6	\$4,000	\$400
	Subtask 3.7	\$3,327	\$333
	Subtask 3.8	\$2,201	\$220
Task 3 Subtotal		\$42,753	\$4,275
Task 4	Subtask 4.1	\$10,579	\$1,058
	Subtask 4.2	\$6,977	\$698

Task 4 (cont.)	Subtask 4.3	\$2,175	\$218
	Subtask 4.4	\$2,905	\$290
Task 4 Subtotal		\$22,636	\$2,264
Task 5	Subtask 5.1	\$1,246	\$125
	Subtask 5.2	\$12,400	\$0.00
	Subtask 5.3	\$2,600	\$0.00
Task 5 Subtotal		\$16,246	\$125
Task 6	Subtask 6.1	\$11,316	\$1,132
	Subtask 6.2	\$1,721	\$172
	Subtask 6.3	\$1,721	\$172
	Subtask 6.4	\$947	\$95
	Subtask 6.5	\$3,074	\$307
Task 6 Subtotal		\$18,778	\$1,878
Task 7	Subtask 7.1	\$16,314	\$1,631
	Subtask 7.2	\$2,967	\$297
	Subtask 7.3	\$1,305	\$131
	Subtask 7.4	\$860	\$86
	Subtask 7.5	\$3,226	\$323
	Subtask 7.6	\$1,248	\$125
	Subtask 7.7	\$1,180	\$118

Task 7 (cont.)	Subtask 7.8	\$4,957	\$496
Task 7 Subtotal		\$32,058	\$3,206
Task 8	Subtask 8.1	\$21,944	\$2,194
	Subtask 8.2	\$2,437	\$244
	Subtask 8.3	\$1,721	\$172
	Subtask 8.4	\$860	\$86
	Subtask 8.5	\$549	\$55
	Subtask 8.6	\$1,456	\$146
	Subtask 8.7	\$803	\$80
	Subtask 8.8	\$1,157	\$116
	Subtask 8.9	\$3,648	\$365
Task 8 Subtotal		\$34,575	\$3,458
Task 9	Subtask 9.1	\$13,688	\$1,369
	Subtask 9.2	\$1,456	\$146
	Subtask 9.3	\$1,068	\$107
	Subtask 9.4	\$549	\$55
	Subtask 9.5	\$1,157	\$116
	Subtask 9.6	\$2,623	\$262
Task 9 Subtotal		\$20,540	\$2,054
Task 10	Subtask 10.1	\$8,585	\$858

Task 10 (cont.)	Subtask 10.2	\$860	\$86
	Subtask 10.3	\$653	\$65
	Subtask 10.4	\$549	\$55
	Subtask 10.5	\$1,157	\$116
	Subtask 10.6	\$2,207	\$221
Task 10 Subtotal		\$14,011	\$1,401
Task 11	Subtask 11.1	\$3,538	\$354
	Subtask 11.2	\$4,810	\$481
	Subtask 11.3	\$2,497	\$250
Task 11 Subtotal		\$10,845	\$1,085
Task 12	Subtask 12.1	\$2,148	\$215
	Subtask 12.2	\$8,251	\$825
	Subtask 12.3	\$4,368	\$437
	Subtask 12.4	\$6,883	\$688
	Subtask 12.5	\$2,424	\$242
	Subtask 12.6	\$3,373	\$337
	Subtask 12.7	\$3,602	\$360
	Subtask 12.8	\$5,670	\$567
	Subtask 12.9	\$5,000	\$0.00
	Subtask 12.10	\$9,950	\$0.00

Task 12 (cont.)	Subtask 12.11	\$11,602	\$1,16
	Subtask 12.12	\$11,091	\$1,109
	Subtask 12.13	\$3,903	\$390
Task 12 Subtotal		\$78,266	\$6,332
Task 13	Subtask 13.1	\$6,488	\$649
	Subtask 13.2	\$5,141	\$514
	Subtask 13.3	\$2,214	\$221
	Subtask 13.4	\$4,178	\$418
	Subtask 13.5	\$5,146	\$515
Task 13 Subtotal		\$23,166	\$2,317
Total Maximum Actual Costs:		\$420,015	
Total Reimbursable Expenses:		\$21,144	
Total Fixed Fee:			\$39,006

Section 2 - Schedule of Rates and Charges

	ACTUAL HOURLY RATE	FRINGE BENEFIT RATE (%)	OVERHEAD RATE (%)	GENERAL & ADMINISTRATIVE RATE (%)	COMBINED RATE	ACTUAL COST RATE \$
FALL CREEK ENGINEERING						
Principal	\$66.90	120.27%	36.98%	2.32%	159.57%	\$173.65
Project Manager	\$58.00	120.27%	36.98%	2.32%	159.57%	\$150.55
Associate Engineer	\$40.00	120.27%	36.98%	2.32%	159.57%	\$103.83
Administrator	\$44.00	120.27%	36.98%	2.32%	159.57%	\$114.21
RICON CONSULTING						
Principal	\$62.76	65.31%	81.66%	1.47%	148.44%	\$155.92
Project Manager	\$56.95	65.31%	81.66%	1.47%	148.44%	\$141.49
NEPA Specialist	\$44.23	65.31%	81.66%	1.47%	148.44%	\$109.89
Cultural Resources	\$48.08	65.31%	81.66%	1.47%	148.44%	\$119.45
Permitting Lead	\$43.00	65.31%	81.66%	1.47%	148.44%	\$106.83
Waters Biologist	\$32.69	65.31%	81.66%	1.47%	148.44%	\$81.22
Biologist	\$31.73	65.31%	81.66%	1.47%	148.44%	\$78.83
Cultural Resources Lead	\$31.25	65.31%	81.66%	1.47%	148.44%	\$77.64
Archeologist	\$25.00	65.31%	81.66%	1.47%	148.44%	\$62.11
Planner	\$32.93	65.31%	81.66%	1.47%	148.44%	\$81.81
GIS Specialist I	\$37.37	65.31%	81.66%	1.47%	148.44%	\$92.84
Admin Assistant I	\$30.64	65.31%	81.66%	1.47%	148.44%	\$76.12
CAL ENGINEERING AND GEOLOGY						
Principal Engineer	\$62.50	35.99%	28.48%	92.60%	157.07%	\$160.67
Principal Geologist	\$75.48	35.99%	28.48%	92.60%	157.07%	\$194.04
Senior Engineer	\$51.44	35.99%	28.48%	92.60%	157.07%	\$132.24
Project Geologist	\$32.69	35.99%	28.48%	92.60%	157.07%	\$84.04

GIS / CAD Specialist	\$30.29	35.99%	28.48%	92.60%	157.07%	\$77.87
STREETER						
Principal	\$88.48	46.30%	36.50%	7.42%	190.22%	\$168.31
Project Manager / Senior Engineer	\$74.29	46.30%	36.50%	7.42%	190.22%	\$141.31
Associate Engineer	\$32.00	46.30%	36.50%	7.42%	190.22%	\$60.87
PGA						
Principal	\$80.29	104.30%	40.20%	51.42%	195.92%	\$237.59
Landscape Architect	\$33.17	104.30%	40.20%	51.42%	195.92%	\$98.16
Irrigation Designer	\$40.38	104.30%	40.20%	51.42%	195.92%	\$119.49
Keith Higgins						
Traffic Engineer	\$200.00				100.00%	\$200.00

EXHIBIT C: INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 per claim/ aggregate limit, coverage to be maintained following completion of work on project for 3 years or if policy is canceled, extended reporting period to equal the same.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONTRACTOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose—Finance
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D
FEMA Provisions – Consultant Agreements
(Non-Construction)

Contractor agrees to comply with the following FEMA-related provisions in the performance of this Agreement:

A. Additional Remedies for Violation of Contract Terms.

If the Maximum Total Compensation for this Contract exceeds \$150,000, the following provisions will apply in addition to Section 19, entitled "Termination":

"As an alternative to immediately terminating the Contract "for cause" upon written notice of a material breach, the City has the right to request the Contractor to cure the breach within a fixed period of time set forth in a written notice to the Contractor. The City also may seek reasonable assurance from the Contractor of adequate future performance.

If the City gives the Contractor written notice of a material breach and an opportunity to cure, it may withhold payment of any further funds due the Contractor until the default is corrected. The City must notice that it will withhold payments in the written notice it gives to the Contractor.

If the Contractor fails to cure a material breach or provide reasonable assurances of adequate future performance after being given written notice by the City, then the City may:

- Declare the Contractor to be in default,
- Terminate this Contract in whole or in part,
- Withhold further payment of any further funds which may be due the Contractor, and/or
- Pursue any and all other remedies afforded by law."

B. Contractor Work Hours and Safety Standards Act.

If the Maximum Total Compensation for this Agreement exceeds \$100,000 and requires the employment by the Contractor or a subcontractor of laborers or mechanics, the following provision will apply:

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

3. **Withholding for unpaid wages and liquidated damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

C. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

D. Notice of FEMA Reporting Requirements and Regulations

1. **General.** The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration 4308-DR-CA, FEMA requires the State of California to provide various financial and performance reporting.
 - a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
 - b. Failure of the City to satisfy reporting requirements and information and documentation requests made by the State of California and FEMA could result in loss of Federal financial assistance awarded to fund this Project.

E. Access to Records (44 C.F.R. § 13.36(i)(10))

The following access to records requirements apply to this Agreement in addition to Section 15:

1. The Contractor agrees to provide the City, the State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

F. Retention of Records (44 C.F.R. § 13.36(i)(11))

The following retention requirements apply to this Agreement in addition to Section 15:

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The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the State of California's closure of the Project, as specified in the "Application Closeout" letter that will be sent to the authorized agent for the City by the State Public Assistance Officer of the Governor's Office of Emergency Services at City's request after Project's completion, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the City, State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

G. Clean Air Act Requirements

If the Maximum Total Compensation for this Agreement exceeds \$100,000, the following provision applies to the extent applicable:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

H. Federal Water Pollution Control Act

If the Maximum Total Compensation for this Agreement exceeds \$100,000, the following provision applies to the extent applicable:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA."

I. Energy Efficiency/Conservation (44 C.F.R. § 13.36(i)(13))

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. Suspension and Debarment

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

K. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))

A Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

L. DHS Seal, Logo, and Flags

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA pre-approval.

M. No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Agreement.

N. Fraud and False or Fraudulent or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

O. Subcontractors

If the Contractor is using subcontractors, then the following provisions apply:

1. **Subcontractor Compliance:** The Contractor shall place in any subcontractor agreement the requirement that the subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Contract, including the FEMA requirements.
2. **Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms:** If the Contractor is authorized by this Agreement to use subcontractors, the Contractor warrants that it took the following affirmative steps, and that it has retained documentation of these steps:
 - Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this Agreement;

- Made reasonable efforts to solicit the businesses on the list as subcontractors for this Agreement;
- Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
- Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

If at any time during the term of the Agreement the Contractor seeks and obtains authorization to use subcontractors to complete any of the scope of work, the Contractor shall take the affirmative steps listed above when selecting the subcontractor and will maintain documentation of all such efforts.