



TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: James Winslow, Senior Project Engineer

SUBJECT: Approve Revised Project Plans and Specifications and Award of Construction Contracts for the Crosswalk at South Kellogg Avenue Project

RECOMMENDATION:

- A. Approve revised Plans and Specifications for the Crosswalk at South Kellogg Avenue Project; and
- B. Authorize the City Manager to execute a construction contract with Toro Enterprises, Inc. for the Crosswalk at South Kellogg Avenue Project in an amount not to exceed \$129,965, subject to the requirements of the contract documents (Attachment 1); and
- C. Authorize the City Manager to approve contingency contract change orders for the Crosswalk at South Kellogg Avenue Project, if necessary, in an amount not to exceed \$26,000; and
- D. Authorize the City Manager to execute a consultant services agreement with Filippin Engineering, Inc., in an amount not to exceed \$28,875 for Construction Management, Inspection, and Testing Services for the Crosswalk at South Kellogg Avenue Project (Attachment 2); and
- E. Authorize an additional appropriation of \$25,076 from Fund 402 (CDBG Fund) to CIP Project No. 9098 – Crosswalk at South Kellogg Avenue Project account 402-5-9098-705, and increase CDBG grant revenues account 402-4-8500-222 by \$25,076; and
- F. Authorize an additional appropriation of \$80,405 from Fund 205 (Measure A) to CIP Project No. 9098 – Crosswalk at South Kellogg Avenue Project account 205-5-9098-705.

BACKGROUND:

The Crosswalk at South Kellogg Avenue Project (Crosswalk Project) [Capital Improvement Program (CIP) Project No. 9098] is located adjacent to the Hollister/Kellogg Park Project (CIP No. 9035), which is a proposed four-acre neighborhood park located

on the east side of Kellogg Avenue, north of Hollister Avenue. The park project is currently under construction. Neighborhood Services and Public Safety began the Hollister/Kellogg Park Project design in 2012 when Council authorized the Design Services Contract with Van Atta Associates, Inc. Neighborhood Services and Public Safety held several public workshops between 2012 to 2014. On September 1, 2015, Council provided direction on the design of the park project. Amid discussion of the park project, Council inquired about a “mid-block crosswalk” as a safe passage for the hundreds of children living in Villa La Esperanza who would be traveling to the new park. This crosswalk project will address Council’s concern and is being delivered before completion of the park improvements.

On February 14, 2018, the City Manager executed a Professional Design Services Agreement (No. 2018-007) with Kimley-Horn and Associates, Inc. for the design of the Hollister/Kellogg Park Street Improvement Project (previous name for the Crosswalk Project) for a total not-to-exceed \$21,000 and an expiration date of June 30, 2019. Neighborhood Services and Public Safety originally managed the Crosswalk Project, but in May 2018, the Public Works Department took over responsibility for the project delivery.

On June 5, 2018, Council held a Public Hearing and adopted the 2018-19 Community Development Block Grant (CDBG) Action Plan. The City received a higher allocation of CDBG funds from the U.S. Department of Housing and Urban Development (HUD) than originally estimated. Neighborhood Services and Public Safety recommended all the CDBG capital funds, totaling \$140,633, be applied to the Crosswalk Project to provide for construction, construction management, staff time, and additional design costs.

DISCUSSION:

Plans and Specifications

On August 21, 2018, Council approved the preliminary Crosswalk Project Plans and Specifications, authorized the Public Works team to advertise a notice inviting bids, and authorized the City Manager to execute Amendment No. 1 to Professional Design Services Agreement No. 2018-007 with Kimley-Horn and Associates, Inc. (KHA) to modify the scope of work to include additional services. Prior to formal bidding, Public Works directed KHA to proceed with the additional scope of work and incorporate the final revisions into the plans and specifications taking them from 95% (identified at the Council meeting) to 100% complete. The changes include removing electrical conduits, incorporating potholing information, coordinating and connecting to the Hollister/ Kellogg Park sidewalk entrance, incorporating the Federal CDBG requirements, and providing cost estimates for ordering the signal equipment in advance.

Staff is recommending Council approve the revised plans and specifications for the Crosswalk Project. The plans and specifications consist of the plan sheets, bid documents, the City’s General Provisions, Project Special Provisions, Federal CDBG contract requirements, and Addendum Numbers 1 and 2. Public Works issued Addendum Numbers 1 and 2 to revise the electrical plan sheet, update the base bid schedule to reflect the change, replace Federal Davis Bacon Wage Determinations dated August 31, 2018 with the revised General Decision Number: CA180023 CA23 dated September 7, 2018, include the supplemental Federal forms related to Disadvantaged Business

Enterprise (DBE) information, and answer bidder's questions. The specifications incorporate by reference the Caltrans Standard Specifications 2015 edition, the Caltrans 2015 Standard Plans, Occupational Safety and Health Administration (OSHA) regulations (the Construction Safety Orders), the Manual of Uniform Traffic Control Devices (MUTCD) and the Caltrans Construction Manual. The full set of plans and contract specifications are available for review in the City Clerk's office and online at <http://www.cityofgoleta.org/i-want-to/view/city-bid-opportunities>.

Bidding

The Public Works Department solicited competitive bids for the Crosswalk Project in the Santa Barbara Independent on August 30 and September 6, 2018, and posted the contract documents on the City's website and Construction Bidboard (eBidboard). Public Works issued Addendum Numbers 1 and 2 on September 18, 2018. The sealed bids were opened at City Hall on Thursday, September 20, 2018. The City received a total of five bids. A summary of the bids received is shown in the table below.

Contractor	City	Bid Amount
Toro Enterprises, Inc.	Oxnard	\$129,964.50
Lash Construction, Inc.	Santa Barbara	\$130,090.00
G. Sosa Construction	Santa Maria	\$148,101.00
Dekan C.C.	Santa Paula	\$209,413.00
C.S. Legacy Construction, Inc.	Ontario	\$262,323.00

The apparent low bidder is Toro Enterprises, Inc. (Toro) Public Works has reviewed the bid, investigated the contractor, and has determined Toro, to be responsive to the bid solicitation. The Public Works Department does not have reservations about the contractor's ability to perform the advertised work.

Therefore, Public Works recommends that Council award a construction contract for the Crosswalk Project to Toro. A proposed contract with Toro in the amount of \$129,965 is included as Attachment 1. Public Works is also requesting that the City Manager be given authority to approve contract change orders up to \$26,000 above the bid price. Public Works is requesting a 20% contract contingency due to the relative span of the bids and the proximity to the adjacent construction project – Hollister/Kellogg Park.

Construction Management

For Construction Management, Inspection and Testing (CMIT), Public Works recommends Council authorize the City Manager to execute a professional design services agreement with Filippin Engineering, Inc. (Filippin) in a not-to-exceed amount of \$28,875 (Attachment 2).

Filippin is listed on the City's pre-approved on-call list of consultants, resulting from a Qualification Based Selection (QBS) process. Public Works is recommending Filippin due to their considerable experience in managing similar projects in accordance with the

Caltrans Construction Manual and Federal requirements. Filippin has not participated in the planning or design phases of the Project.

CDBG Allocation

On June 5, 2018, Council approved the final 2018-19 CDBG Action Plan. Council authorized allocating \$140,633 to the Crosswalk Project to provide for construction, construction management, staff time, and additional design costs. The estimated project costs based on bidder's proposals received, equipment purchase orders, and construction management proposal are higher than the initial project cost estimate. Due to a City staff retirement last fiscal year, there was approximately \$12,640 from the FY 2017-18 CDBG administration account that the Housing and Urban Development (HUD) representative directed that the funding is allowed to be reprogrammed into another eligible activity. It cannot be reprogrammed for administration for the current Fiscal Year, but may be programmed towards an existing and allowable capital improvement project. There is also approximately \$12,436 in CDBG funds available, that were originally programmed for contingencies from the Magnolia Avenue Sidewalk Project (CIP No. 9082). This project has been completed, allowing available CDBG funds to be reprogrammed to the Crosswalk Project. Due to the complexity of CDBG Federal requirements, it is more efficient to allocate CDBG funds to one project rather than splitting them between two or more projects. The requested reprogrammed amount of \$25,076 represents less than 25% of the total annual CDBG allocation. Therefore, HUD requires a minor amendment to the City's Action Plan. The Public Works and Neighborhood Services Departments will work on publishing a notification of the amended Action Plan in the newspaper. Council action is not required for the minor amendment. In the event that the additional CDBG funds are not able to be reprogrammed towards the Crosswalk Project, additional Measure A funds may be available to backfill the project costs.

Therefore, Public Works and Neighborhood Services and Public Safety is recommending Council appropriate \$25,076 from available CDBG funds to the Crosswalk Project (402-5-9098-705).

FISCAL IMPACTS:

The total estimated cost for the Crosswalk Project is \$267,138, based on a \$129,965 bid, plus contingencies, construction management, design services, equipment, and staff time, and is shown in the following table.

Project Cost Estimates

Project Components	Estimated Costs	Funding Source	Funding Amounts
Labor*	\$20,000	General Fund	\$21,024
Consultants	\$41,000	CDBG – FY 18/19	\$140,633
Equipment	\$21,298	CDBG – Available Funds (FY 17/18)	\$12,640
Construction	\$129,965	CDBG – Reprogram (Magnolia Sidewalk)	\$12,436
Construction Management	\$28,875	Measure A – Fund Balance	\$80,405
Contingency	\$26,000		
Totals	\$267,138	Totals	\$267,138

*Estimated

Project Funding

The FY 18/19 current budget for this project is approximately \$161,657. Funding includes General Fund and Community Development Block Grant (CDBG) funds. Additional funding of \$105,481 is needed to support the total estimated project costs of \$267,138.

To support the additional \$105,481 funding needed, Public Works and Neighborhood Services and Public Safety is recommending additional funds from CDBG and Measure A. Staff recommends Council authorize a budget appropriation of \$25,076 from CDBG funds (Fund 402) to the Crosswalk Project account 402-5-9098-705 and \$80,405 from Measure A fund balance to account 205-5-9098-705. There is approximately \$531,000 available in Measure A fund balance.

The table below summarizes the FY 18/19 project budget, requested appropriations and revised project budget amounts:

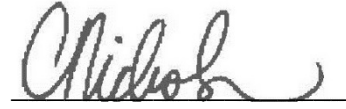
Crosswalk at South Kellogg Avenue Project Budget – Project #9098				
Fund	Account	FY 18/19 Amended Budget	Requested Appropriations	Revised Budget
General Fund	101-5-9098-706	\$21,024		\$21,024
Measure A	205-5-9098-705	-	\$80,405	\$80,405
CDBG	402-5-9098-705	\$140,633	\$25,076	\$165,709
	Total	\$161,657	\$105,481	\$267,138

Due to the additional appropriations related to CDBG funding, a corresponding adjustment will need to be made on the revenue account side, increasing account 402-4-8500-222 by \$25,076.

ALTERNATIVES:

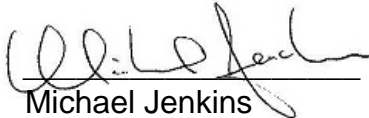
The Council may elect not to approve the revised plans and specifications, reject all bids and direct staff to re-bid the project. This would delay the construction of the Crosswalk Project and disrupt the coordination with the Hollister/Kellogg Park Project construction completion.

Reviewed By:



Carmen Nichols
Deputy City Manager

Legal Review By:



Michael Jenkins
City Attorney

Approved By:



Michelle Greene
City Manager

ATTACHMENTS:

1. Construction Contract with Toro Enterprises, Inc.
2. Professional Services Agreement for Construction Management with Filippin Engineering, Inc.

ATTACHMENT 1

Agreement with Toro Construction for Construction Services
Crosswalk at S. Kellogg Avenue Project (9098)

**PUBLIC WORKS AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
TORO ENTERPRISES, INC.**

This Public Works Agreement (herein referred to as "AGREEMENT") is made and entered into this 16th day of October, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **TORO ENTERPRISES INC.** (hereinafter referred to as "CONTRACTOR").

R E C I T A L S

A. Pursuant to the Notice Inviting Sealed Bids for the Crosswalk at S. Kellogg Avenue Project, bids were received, publicly opened, and declared on the date specified in the notice.

B. On October 16, 2018, Goleta's City Council declared CONTRACTOR to be the lowest responsible bidder and accepted the bid of CONTRACTOR.

C. The City Council, on this 16th day of October, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT with CONTRACTOR for furnishing labor, equipment and material for the Crosswalk at S. Kellogg Avenue Project in the City of Goleta.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CITY agrees to engage CONTRACTOR and CONTRACTOR agrees to furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the Crosswalk at S. Kellogg Avenue Project in the City of Goleta. The work shall be performed in accordance with the Plans and Specifications dated (and as generally described in the "Notice Inviting Bids," attached as Exhibit A) and in accordance with bid prices set forth in CONTRACTOR'S Bid Proposal (attached as Exhibit B) and in accordance with the instructions of the City Engineer, or City's Manager's designee.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The contract documents for the aforesaid project, a complete set of which is on file with the Goleta City Clerk's Office, shall consist of the Notice Inviting Bids, Instructions to Bidders, Bid Proposal, Standard Specifications, Special Provisions, and all referenced specifications, details, standard drawings, and appendices; together with this Agreement and all required bonds, insurance certificates, permits, notices and affidavits; and also, including any and all addenda or supplemental agreements clarifying, amending, or extending the work contemplated as may be required to insure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly

and in accordance with the law and lawful governmental regulations shall be performed by CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written agreement, the provisions of this Agreement, and the Standard Specifications, in that order, shall control. Collectively, these contract documents constitute the complete agreement between CITY and CONTRACTOR and supersede any previous agreements or understandings.

3. COMPENSATION: CONTRACTOR agrees to receive and accept the prices set forth in its Bid Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.
4. TIME OF PERFORMANCE: CONTRACTOR agrees to complete the work within **forty-five (45)** calendar days from the date of the notice to proceed. By signing this Agreement, CONTRACTOR represents to CITY that the contract time is reasonable for completion of the work and that CONTRACTOR will complete such work within the contract time. In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay CITY as liquidated damages, not as a penalty, the sum of \$1000 per day for each and every day of unauthorized delay beyond the completion date, which amount shall be deducted from any payments due or to become due the CONTRACTOR.
5. PREVAILING WAGES:
 - A. Pursuant to Labor Code Sections §§1720 *et seq.*, including but not limited to sections 1771, 1774 and 1775, and as specified in Title 8, California Code of Regulations, Section 16000 *et seq.*, CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.
 - B. In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.

- C. CITY directs CONTRACTOR's attention to Labor Code Sections 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.
 - D. Labor Code Section 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:
 - (1) When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
 - (2) When the number of apprentices in training in the area exceeds a ratio of one to five, or
 - (3) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
 - (4) When assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
- Pursuant to Labor Code § 1776, CONTRACTOR shall comply with all Department of Industrial Relations registration requirements.
- E. CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.
 - F. CONTRACTOR and any subcontractor must comply with Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.
 - G. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations (DIR), ex-officio the Administrator of Apprenticeship, San Francisco,

California, or from the Division of Apprenticeship Standards and its branch offices.

- H. CONTRACTOR and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this Agreement. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONTRACTOR must provide copies of the records at its cost.
6. LEGAL HOURS OF WORK: Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Except as provided by Labor Code Section 1815, the Contractor shall, as a penalty to the City, forfeit twenty five dollars (\$25) for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 (commencing at Section 1810) of the California Labor Code.
7. TRAVEL AND SUBSISTENCE PAY: CONTRACTOR agrees to pay travel and subsistence pay to each worker needed to execute the work required by this Agreement as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
8. CONTRACTOR'S LIABILITY: The CITY and its officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workers or employees of CONTRACTOR, of its subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever.

CONTRACTOR will indemnify Indemnities against and will hold and save Indemnitees harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of CONTRACTOR, its agents, employees, subcontractors or invitees provided for herein, whether or not there is concurrent passive negligence on the part of CITY. In connection therewith:

- a. CONTRACTOR will defend any action or actions filed in connection with any such claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys' fees, expert fees and costs incurred in connection therewith.
- b. CONTRACTOR will promptly pay any judgment rendered against CONTRACTOR or Indemnitees covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations or activities of CONTRACTOR hereunder, and CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.
- c. In the event Indemnitees are made a party to any action or proceeding filed or prosecuted against CONTRACTOR for damages or other claims arising out of or in connection with the work, operation or activities hereunder, CONTRACTOR agrees to pay to Indemnitees and any all costs and expenses incurred by Indemnitees in such action or proceeding together with reasonable attorneys' fees.

CONTRACTOR'S obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of CITY under any provision of this agreement, Contractor shall not be required to indemnify and hold harmless CITY for liability attributable to the active negligence of CITY, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where CITY is shown to have been actively negligent and where CITY active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

So much of the money due to CONTRACTOR under and by virtue of the contract as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damages as aforesaid.

It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies which Indemnitees may have under the law.

This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to Indemnitees.

CONTRACTOR, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the CONTRACTOR regardless of any prior, concurrent, or subsequent passive negligence by the Indemnitees.

9. THIRD PARTY CLAIMS: In accordance with Public Contracts Code Section 9201, CITY will promptly inform CONTRACTOR regarding third-party claims against CONTRACTOR, but in no event later than ten (10) business days after CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of this Agreement. As more specifically detailed in the contract documents, CONTRACTOR agrees to indemnify and defend the City against any third-party claim.
10. WORKERS COMPENSATION: In accordance with California Labor Code Sections 1860 and 3700, CONTRACTOR and each of its subcontractors will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, CONTRACTOR, by signing this contract, certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
11. INSURANCE: With respect to performance of work under this Agreement, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as required in the Standard Specifications.
12. ASSIGNMENT: This Agreement is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights or obligations of either party without the prior written consent of the other shall be void and of no force and effect.
13. INDEPENDENT CONTRACTOR: CONTRACTOR is and shall at all times remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents shall have control of the conduct of CONTRACTOR or any of CONTRACTOR'S employees, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY.
14. TAXES: CONTRACTOR is responsible for paying all retail sales and use, transportation, export, import, special or other taxes and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this contract. CONTRACTOR is responsible

for ascertaining and arranging to pay them. The prices established in the contract shall include compensation for any taxes CONTRACTOR is required to pay by laws and regulations in effect at the bid opening date.

15. LICENSES: CONTRACTOR represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of Goleta business license, if required under CITY ordinance.
16. SEVERABILITY: If any portion of these contract documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect provided that it does not frustrate the mutual intent of the parties herein.
17. WHOLE AGREEMENT: This Agreement supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this contract shall not be valid or binding. Any modifications of this contract will be effective only if signed by the party to be charged.
18. AUTHORITY: CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this Agreement represent all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest herein. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. This Agreement may be modified by written amendment. CITY's City Manager may execute any such amendment on CITY's behalf.
19. NOTICES: All notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117
Attn: City Manager

CONTRACTOR
Toro Enterprises, Inc.
2101 E. Ventura Blvd
Oxnard, CA 93036
Attn: Sean Castillo, President

20. NO THIRD PARTY BENEFICIARY: This Agreement and every provision herein is for the exclusive benefit of CONTRACTOR and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the CONTRACTOR's or the CITY's obligations under this Contract.
21. TIME IS OF ESSENCE. Time is of the essence for each and every provision of the Contract Documents.
22. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES: The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.
23. GOVERNING LAW: This Agreement shall be governed by the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Santa Barbara County.
24. TERMINATION: Consistent with 24 CFR 570.503(b)(6), suspension or termination may occur if the subrecipient (Contractor) materially fails to comply with any term of the CDBG award, and that the agreement may also be terminated for convenience (also see 24 CFR 85.43–85.44 and 84.62).
25. COST PRINCIPALS: The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to the City.

The City, its agencies or instrumentalities, and subrecipients (Contractor) shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128² (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at §570.502.

26. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

For the Scope of Work, City has a Disadvantaged Business Enterprise (DBE) goal of 3.00%. Contractor is required to submit to City completed Caltrans Form 10-01 reflecting the DBE commitment by Contractor. Contractor to submit Caltrans Form 10-02 Contractor Contract DBE Information to the City prior to contract award.

Contractor is required to include in applicable Subcontracts the DBE contract language show in the attached Exhibit Standard Agreement for Subcontractor/DBE Participation (Exhibit C).

A DBE may be terminated only with written approval by City and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting City's consent for the proposed termination, the prime Contractor must meet the procedural requirements specified in 49 CFR 26.53(f).

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

- 28. RETENTION OF RECORDS/AUDIT:** For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., Federal regulations specified in OMB Circulars A-21, A-87 and A-122, as applicable, and 24 CFR 570.502, 24 CFR

570.506, Subpart K of 24 CFR Part 570, and 24 CFR 84.21-28 that are pertinent to the Project and activities to be funded under this acknowledgement, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the Contractor, subcontractors, and the City shall maintain and retain - for five years after grantees or subgrantees make final payments and all other pending matters are closed - all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the contract. The state, the State Auditor, City, CDBG, HUD, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$2,000 shall contain this provision.

29. DISPUTES: Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the City's Project Manager and Public Works Director, who may consider written or verbal information submitted by the Contractor.

Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the Contractor may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the committee will excuse the Contractor from full and timely performance in accordance with the terms of this contract.

30. AUDIT REVIEW PROCEDURES: Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the City's Chief Financial Officer.

Not later than 30 days after issuance of the final audit report, the Contractor may request a review by the City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by the City will excuse the Contractor from full and timely performance, in accordance with the terms of this contract.

31. EQUIPMENT PURCHASE: Prior authorization in writing, by the City's Project Manager shall be required before the Contractor enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or

Contractor services. The Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in the Contractor's Cost Proposal and exceeding \$5,000 prior authorization by the City's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The Contractor shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Contractor may either keep the equipment and credit the City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit the City in an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined at the Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the City and the Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

32. INSPECTION OF WORK: The Contractor and any subcontractor shall permit the City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.
33. SAFETY: The Contractor shall comply with OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. The Contractor shall comply with safety instructions issued by the City Safety Officer and other City representatives. Contractor personnel shall wear hard hats and safety vests at all times while working on the project site.

Pursuant to the authority contained in Section 591 of the Vehicle Code, the City has determined that such areas are within the limits of the project and are open to public traffic. The Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Contractor shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

- 34. OWNERSHIP OF DATA:** Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the City; and no further agreement will be necessary to transfer ownership to the City. The Contractor shall furnish the City all necessary copies of data needed to complete the review and approval process.

It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

The Contractor is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the City of the machine-readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities, or losses arising out of, or connected with any use by the City of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the Contractor.

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

The City may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

Any subcontract in excess of \$2,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

- 35. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical, or other data and information relative to the City's operations, which are designated confidential by the City and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure.

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

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

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

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

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

36. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: In accordance with Public Contract Code Section 10296, the Contractor hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period, because of the Contractor's failure to comply with an order of a federal court that orders the Contractor to comply with an order of the National Labor Relations Board.
37. EVALUATION OF CONTRACTOR: The Contractor's performance will be evaluated by the City. A copy of the evaluation will be sent to the Contractor for comments. The evaluation together with the comments shall be retained as part of the contract record.
38. NON DISCRIMINATION: The Contractor, its contractors and subcontractors agree to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR, Part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities, the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) which requires certain federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people, and the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225).
39. DEBARMENT AND SUSPENSION CERTIFICATION: The Contractor's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal

agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

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

40. STATE PREVAILING WAGE RATES: The Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.
41. CONFLICT OF INTEREST: The Contractor shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

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

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

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

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

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

This is in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

- 43. EQUAL EMPLOYMENT OPPORTUNITY:** Contractor agrees to the following:
- (a) Acknowledgement Subject to Executive Order 11246: Recipient Department hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60 which is paid for in whole or in part with funds obtained from the Oversight Department, the following equal opportunity clause:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. The Contractor will take affirmative action to insure that applicants are employed, without regard to race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.
 - (2) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin.
 - (3) The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor shall incorporate or cause to be incorporated the foregoing provisions into any subcontract for work covered by this acknowledgement so that such provision will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

- (b) Acknowledgement Subject to Provisions of 24 CFR 135. The Contractor and its subcontractors shall be responsible for complying with the provisions of 24 CFR, Part 135, also known as Section 3, Employment opportunities for business and lower income persons in connection with assisted projects, a copy of which is on file with the Oversight Department which will be duplicated for Contractor upon request.

To the extent that they are otherwise applicable, City and Contractor shall comply with:

- (a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60.

44. CDBG REQUIREMENTS: During the performance of this acknowledgement, consultant agrees to comply with the following federal provisions:

- (a) Age discrimination act of 1975 and section 504 of the rehabilitation act of 1973 prohibits discrimination on the basis of age or with respect to an otherwise qualified handicapped individual, as provided in section 504 of the rehabilitation act of 1973, will also apply to any such program or activity.
- (b) Contractor must also comply with all regulations of the Americans with Disabilities Act (ADA) of 1990 (42 usc §§ 12101 et. seq.).
- (c) Section 3 of the housing and community development act of 1968, as amended, 12 USC §§ 1701 et. seq., compliance in the provision of training, employment and business opportunities requires that the work to be performed under this acknowledgement is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of section 3 of the housing and urban development act of 1968, as amended, 12 USC § 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and

employment be given to lower income residents of the project area and contract for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project. The parties will comply with the provisions of section 3 and the regulations issued pursuant thereto by the secretary of HUD set forth in 24 CFR § 135, and all applicable rules and orders of HUD issued thereunder before executing this acknowledgement. The parties certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

- (d) LOBBYING CERTIFICATION. CONTRACTOR MUST INCLUDE THE LANGUAGE OF THIS CERTIFICATION IN ALL SUBCONTRACTS; ALL SUBCONTRACTORS MUST CERTIFY AND DISCLOSE ACCORDINGLY.
- (e) Contractor agrees to comply with the following requirements insofar as they apply to the performance of this acknowledgement:
 - i. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.
 - ii. The regulations in 24 CFR art 58 assuming environmental review, decision making and action responsibilities.
 - iii. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - iv. Compliance with Public Law 88-352, which is title VI of the Civil Rights Act of 1964 and implementing regulations in 24 CFR part 1.
 - v. 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 (Pub. L. 94A 163, 89 Stat. 871).
 - vi. Program Income. The Subrecipient (Contractor) shall report quarterly, all program income (as defined at 24 CFR 570.500(a) and 570.504 (c)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient (Contractor) shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient (Contractor) may use such income during the contract period for activities permitted under this contract and shall reduce requests for an additional fund by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee (City) within thirty (30) days after expiration of the term of the contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with all the formalities required by law on the respective dates set forth opposite their signatures.

This Agreement is executed on 16th day of October, 2018, at Goleta, California, and effective as of _____.


CITY OF GOLETA:

Michelle Greene, City Manager

ATTEST:

Deborah Lopez, City Clerk

APPROVED AS TO FORM:



Winnie Cai, Assistant City Attorney

CONTRACTOR:

Sean Castillo, President

State of California License No.

Class A License No. 710580

Business Phone No.

805-483-4515

CONTRACTOR'S Emergency Phone No. at
which contractor can be reached at any time

805-432-2628

SECTION A NOTICE INVITING SEALED BIDS

NOTICE INVITING SEALED BIDS FOR THE CROSSWALK AT SOUTH KELLOGG AVENUE

130 Cremona Drive, Suite B, City of Goleta, CA

PUBLIC NOTICE IS HEREBY GIVEN that the City of Goleta ("CITY"), invites sealed bids for the above stated project and will receive such bids in the office of the City Clerk, 130 Cremona Drive, Suite B, Goleta, California 93117, **before 3:00 P.M., September 20, 2018**, and will be publicly opened and read aloud promptly thereafter. Faxes or any electronic format is not acceptable. Copies of the Contract Documents and Specifications are available from the CITY, 130 Cremona Drive, Suite B, Goleta, California 93117 upon payment of a \$20.00 non-refundable fee if picked up, or payment of a \$30.00 non-refundable fee, if mailed or no payment to CITY if obtained from Construction Bidboard, Inc. at <http://www.ebidboard.com/>, or CITY website at <http://www.cityofgoleta.org/i-want-to/view/city-bid-opportunities>.

The work includes all labor, material, supervision, plant and equipment necessary to construct and deliver a finished CROSSWALK AT SOUTH KELLOGG AVENUE. Work includes sawcutting and removing asphalt pavement and base; removing concrete curb, gutter, sidewalk; constructing curb, gutter, sidewalk, curb extensions and ADA access ramps; constructing an Rectangular Rapid Flashing Beacon (RRFB) electrical system; clearing and grubbing; and installing signage, striping and pavement markings per the project plans and specifications on South Kellogg Avenue within the City of Goleta, CA. The contract period is 45 Working Days.

Any contract entered into pursuant to this notice will incorporate provisions of the California Labor Code. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations per California Labor Code Section 1771.4, including prevailing wage rates and apprenticeship employment standards. Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex, or religion will also be required. The CITY hereby affirmatively ensures that all business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

Note that federal Community Development Block Grant funds are being used and, therefore, this project is subject to Davis Bacon Act. The DBE Contract goal is 3%.

Bids must be prepared on the approved bid forms in conformance with the "Bidding Instructions" and the General Provisions and submitted in a sealed envelope plainly marked on the outside, **"SEALED BID FOR CROSSWALK AT SOUTH KELLOGG AVENUE. DO NOT OPEN WITH REGULAR MAIL."** The bid must be accompanied by cash or cashier's check, certified cashier's check, or bidder's bond executed by an admitted surety, made payable to CITY. The bid security shall be an amount equal to ten percent (10%) of the total maximum amount bid with their proposals as required by California law.

A contract may only be awarded to the lowest responsive and responsible bidder that holds a valid Class "A" Contractor's license or specialty licensing in accordance with the provisions of the California Business and Professions Code.

Failure to provide proof of the contractor's current registration pursuant to Section 1725.5 of the Labor Code may result in rejection of the bid as non-responsive. Failure to comply with enforcement provisions pursuant to Section 1771.4 of the Labor Code may result in a determination that the bidder is not responsible.

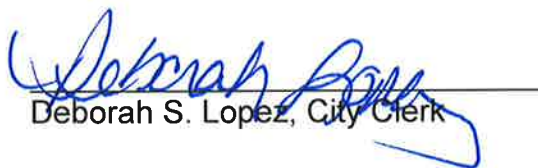
The Contractor Company, including the Responsible Managing Officer (RMO) for the Contractor Company, shall demonstrate a minimum of three (3) years' experience successfully performing projects of substantially similar type, magnitude, and character of the work bid. The CITY reserves the right to reject all bids, reject any bid that is not responsive to the invitation, or to waive any minor irregularity and to take all bids under advisement for a period of up to ninety (90) days.

Pursuant to Public Contract Code section 22300, the successful bidder may substitute certain securities for funds withheld by CITY to ensure performance under the Contract or, in the alternative, request the CITY to make payment of retention to an escrow agent.

Any protest to an intended award of this contract shall be made in writing addressed to the City Clerk prior to the award. Any protest may be considered and acted on by the City Council at the time noticed for award of the contract. To request a copy of the notice of agenda for award, please contact the City Clerk (805) 961-7505 or register on the CITY's website (www.cityofgoleta.org).

For information relating to the details of this Project and bidding requirements contact James Winslow in writing at jwinslow@cityofgoleta.org.

CITY OF GOLETA


Deborah S. Lopez, City Clerk

Published:

Santa Barbara Independent: August 30, 2018, and September 6, 2018

SECTION C PROPOSAL

BID PROPOSAL FOR CROSSWALK AT SOUTH KELLOGG AVENUE

TO THE CITY OF GOLETA ("City"):

In accordance with City's Notice Inviting Sealed Bids, the undersigned Bidder hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the **CROSSWALK AT SOUTH KELLOGG AVENUE** as set forth in the Plans, Specifications, and Contract Documents, and to perform all Work in the manner and time prescribed therein.

Bidder declares that this Bid is based upon careful examination of the Work site, Plans, Specifications, Bidding Instructions, and all other Contract Documents. If this Bid is accepted for award, Bidder agrees to enter into a contract with City at the unit and/or lump sum prices set forth in the following Bid Schedule. Bidder understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to City of the Bid Security accompanying this Bid.

Bidder understands that a Bid is required for the entire Work, that the estimated quantities set forth in the Bid Schedule are solely for the purpose of comparing Bids, and that final compensation under the Contract will be based upon the actual quantities of Work satisfactorily completed. **THE CITY RESERVES THE RIGHT TO INCREASE OR DECREASE THE AMOUNT OF ANY QUANTITY SHOWN AND TO DELETE ANY ITEM FROM THE CONTRACT.** If the work is increased or decreased, the contract price will be adjusted accordingly. It is agreed that the unit and/or lump sum prices bid include all overhead, profit, appurtenant expenses, taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amount, and words shall govern over figures.

If awarded the Contract, the undersigned further agrees that in the event of the Bidder's default in executing the Contract and filing the necessary bonds and insurance certificates **WITHIN FIFTEEN (15) WORKING DAYS**, not including Saturdays, Sundays and legal holidays, after the City has mailed notice of the award of contract to the Bidder, the proceeds of the Bid Security accompanying this Bid shall become the property of the City and this Bid and the acceptance hereof may, at the City's option, be considered null and void.

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**BID PROPOSAL
FOR
CROSSWALK AT SOUTH KELLOGG AVENUE**

Bids will be received before **3:00 P.M., Thursday, September 20, 2018**, at the City of Goleta, City Hall Building, 130 Cremona Drive, Suite B, Goleta, CA 93117.

Questions regarding the Contract Documents, Specifications, Proposal or other Bidding Documents, shall be submitted in writing and emailed to jwinslow@cityofgoleta.org.

The Project insurance requirements are per the Caltrans Standard Specifications, as modified by the City General Provisions contained herein.

Contract Time: 45 Working Days. Time is of the essence in the performance of this contract

BIDDER SHALL COMPLETE:

Bidder's Name TORO ENTERPRISES, INC.
 Street Address 2101 E. VENTURA BLVD
 City OXNARD 93036 State Zip Code 93036
 Telephone Number (805)483-4515 Fax Number 483-2001
 E-mail sean@toroenterprises.com

The following Addenda are acknowledged:
 (Bidder must fill in number and date of each
 Addendum or may enter the word "none" if
 appropriate)

Number	Dated	Initials
<u>1</u>	<u>9-18-18</u>	<u>SC</u>
<u>2</u>	<u>9-18-18</u>	<u>SC</u>


BIDDERS Signature

Sean Castillo
 President

9/12/18
 DATE

77-0396663

Tax I.D. Number

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CROSSWALK AT SOUTH KELLOGG AVENUE

BIDDING SHEET (Page 1 of 3)

The cost of all labor, material and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit or lump sum prices for the various items shown herein.

The City further reserves the right to reject any or all bids, to waive any informality or irregularity in any bid or the bidding procedure, and to delete any items of work in the award of contract. The City's decision on the bid amount is final.

Bidders must bid on all items in the Bid Schedule including the Supplemental and/or Alternative Bid Items in order for their bids to be complete. The award of contract will be based on the lowest responsive Base Bid only.

In the case of unit basis items, the amount set forth under the "Item Total" column (total base bid in words) shall be the product of the unit price bid and the estimated quantity for the item.

Bids on lump sum items are item totals. If a unit price of a lump sum item is entered and it differs from the item total, the item total prevails.

Entries are to be expressed in dollars or decimal fractions of a dollar. Symbols such as commas and dollar signs are ignored and have no significance in establishing unit price or item total.

Unit prices and item totals are interpreted by the number of digits and decimal placement. Do not round item totals or the total bid.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price prevails, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the City's Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Bid comparison are prescribed in Section 2-1.33B of the Caltrans Standard Specification as amended by City's General Provisions.

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BIDDING SHEET (Page 2 of 3)

BASE BID SCHEDULE

ITEM NO	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	Mobilization, Demobilization, Bonds and Insurance	LS	1	\$ 16,000.-	\$ 16,000.-
2	Implement Temporary Water Pollution Control	LS	1	\$ 1,500.-	\$ 1,500.-
3	Construction Surveying	LS	1	\$ 11,000.-	\$ 11,000.-
4	Traffic Control, Postings, and Notifications	LS	1	\$ 7,500.-	\$ 7,500.-
5	Remove Striping, Pavement Marking and Markers	LS	1	\$ 2,340.-	\$ 2,340.-
6	Remove Existing Sign and Post	EA	2	\$ 110.-	\$ 220.-
7	Remove Existing PCC Curb and Gutter	LF	120	\$ 25.-	\$ 3,000.-
8	Remove AC and Aggregate Base	SF	585	\$ 9.-	\$ 5,265.-
9	Grind AC Pavement (2" Min)	SY	175	\$ 25.-	\$ 4,375.-
10	Remove Existing PCC Sidewalk and Base	SF	385	\$ 5.50	\$ 2,117.50
11	Asphalt Concrete (Type A, PG 64-10)	TON	14	\$ 285.-	\$ 3,990.-
12	Asphalt Concrete (Type C2, PG 64-10)	TON	31	\$ 265.-	\$ 8,215.-
13	Crushed Aggregate Base	CY	35	\$ 225.-	\$ 7,875.-
14	Wood Mulch (6" Thick)	CY	2	\$ 600.-	\$ 1,200.-
15	Concrete Curb (Type A1-6) - 6" Curb	LF	120	\$ 30.-	\$ 3,600.-
16	6" Retaining Curb	LF	16	\$ 39.-	\$ 624.-
17	PCC Sidewalk	SF	210	\$ 10.-	\$ 2,100.-
18	Reduced Height Modified Curb	LF	120	\$ 25.-	\$ 3,000.-
19	PCC Gutter (Width Varies)	SF	335	\$ 17.50	\$ 5,862.50
20	PCC ADA Ramp	EA	2	\$ 800.-	\$ 1,600.-
21	RRFB System	LS	1	\$ 17,000.-	\$ 17,000.-
22	Retrofit Street Light on SCE Pole (150W)	EA	1	\$ 3,870.-	\$ 3,870.-
23	Trench Drain	EA	2	\$ 6,750.-	\$ 13,500.-
24	Sign and Post	EA	4	\$ 326.-	\$ 1,304.-

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BIDDING SHEET (Page 3 of 3)

ITEM NO	DESCRIPTION	UNIT	QTY		UNIT PRICE		TOTAL
25	Red Curb	LF	116	\$	1.10	\$	127.60
26	White Reflective Pavement Markers	EA	16	\$	15.50	\$	248.-
27	Thermoplastic Continental Crosswalk	SF	110	\$	6.55	\$	720.50
28	Yellow Line (Detail 21) (2-Coat Paint)	LF	211	\$	2.20	\$	464.20
29	White Edge Line (Detail 27B) (2-Coat Paint)	LF	422	\$	1.10	\$	464.20
30	Sharrow (Thermoplastic)	SF	23	\$	24.-	\$	552.-
31	White Yield Pavement Markings (Thermoplastic)	SF	30	\$	11.-	\$	330.-
TOTAL BASE BID						\$	129,964.50

ONE HUNDRED TWENTY-NINE THOUSAND, NINE HUNDRED SIXTY-FOUR DOLLARS
(Total Bid in Words)

& FIFTY CENTS

Toro Enterprises, Inc
Company Name of Bidder

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PROPOSED EQUIPMENT AND MATERIAL MANUFACTURERS

The Bidder must indicate the name of the manufacturer of the equipment, and supplier of the material, proposed to be furnished under the contract. Awarding of a contract based on this bid does not imply approval by the City of the manufacturers or suppliers listed by the Bidder. No substitution will be permitted after award of contract except upon written approval of the City.

Equipment/Materials	Supplier
1. Portland Cement Concrete	MISSION READY MIX
2. Asphalt Concrete	VULCAN MATERIALS
3. Class 2 Aggregate Base	SANTA PAULA MATERIALS
4. Detectable Warning Surface	ARMORCAST
5. Traffic Stripe Paint and Thermoplastic	ENNIS PAINTS
6. Trench Drain	NEENAH FOUNDRY COMPANY
7. Mulch	VIGORO
8. Electrical Systems (e.g. RRFB)	(Owner Supplied see Special Provisions)
9. Additional equipment/materials listed in the Special Provisions	

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DESIGNATION OF SUBCONTRACTORS

Bidder proposes to subcontract certain portions of the Work which are in excess of one-half of one percent (0.5%) of the total amount base bid or \$10,000, whichever is greater, and to procure materials and equipment from suppliers and vendors.

These Subcontractors are identified as follows:

Work to be Performed	Subcontractor License Number	Subcontractor DIR Registration Number (Note1)	Percent of Total Bid	Subcontractor's Name & Address
Striping Removals & Installation of Striping	838618	1000007945	4.6 %	Interstate Striping & Signs - Thousand Oaks, Ca
Survey/Staking	L5411	1000001533 100000080	8 %	Caseland Surveying Orange, Ca
RRFB System Street Light	851738	1000007719	14.8 %	Lee Wilson Electric Co. Arroyo Grande, Ca
Cold Mill AC & Sweep	754500	1000008423	3.1 %	Cindi Trump Inc (CTI) La Habra, Ca

Note 1: Bidders have 24 hours after the Bid Deadline to submit this information

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BIDDER'S REFERENCES

The following are the names, addresses, and phone numbers for three public agencies for which Bidder has performed projects of the same magnitude and character of the work bid within the past three years:

- | | |
|-------------------|---|
| 1. Name of Agency | <u>COUNTY OF VENTURA</u> |
| Agency Address | <u>800 S. VICTORIA AVE, VENTURA, CA, 93003</u> |
| Telephone | <u>805-654-2039</u> |
| Contact Person | <u>JEFF PRATT</u> |
| Contract Amount | <u>\$1,541,254</u> |
| | |
| 2. Name of Agency | <u>CITY OF SANTA PAULA</u> |
| Agency Address | <u>866 E. Main St. Santa Paula, CA 93060</u> |
| Telephone | <u>805-525-4478</u> |
| Contact Person | <u>JOHN L. ILASIN</u> |
| Contract Amount | <u>\$1,678,863.-</u> |
| | |
| 3. Name of Agency | <u>CITY OF SAN FERNANDO</u> |
| Agency Address | <u>117 N MacNeil St, San Fernando, CA 91340</u> |
| Telephone | <u>818-898-1243</u> |
| Contact Person | <u>MANUAL FABIAN</u> |
| Contract Amount | <u>\$1,062,649.-</u> |

The following are the names, addresses, and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance bonds:

BROKER: AON RISK SERVICES, KEANNA WAPATO, 707 WILSHIRE BLVD, LA, 90017

SURETY: TRAVELERS CASUALTY AND SURETY, 21688 GATEWAY CENTER DR. DIAMOND BAR, CA

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Bidder certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any local, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

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ELIGIBILITY TO CONTRACT

The successful Bidder is prohibited from performing work on this Project with a Subcontractor who is ineligible to perform work on the Project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

BIDDER'S INFORMATION

Bidder certifies that the following information is true and correct:

Bidder's Name TORO ENTERPRISES, INC

Business Address 2101 E. VENTURA BLVD, OXNARD, CA, 93036

Telephone 805-483-4515

State Contractor's License No. and Class 710580 - CLASS A

Original Date Issued 08-31-1995 Expiration Date 08-31-2019

DIR Registration No: 1000002410

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint venturers, and/or corporate officers having a principal interest in this Bid:

SEAN CASTILLO, PRESIDENT, JERRY HANNIGAN, SECRETARY, TRENT ROYLE, V.P. OF OPERATIONS

2101 E. VENTURA BLVD, OXNARD, CA, 93036 - (805)483-4515

CORPORATION

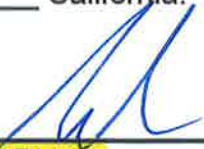
The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this Bid are as follows:

NONE, N/A

All current and prior DBA's, alias, and/or fictitious business names for any principal having an interest in this Bid are as follows:

NONE/ N/A

I declare under penalty of perjury under the laws of the State of California that the above representations are true and correct. Executed this 12th day of SEPT, 2018, at OXNARD California.



Signature and Title of Bidder SEAN CASTILLO,
or Authorized Representative PRESIDENT

(SEAL)

BIDDER'S STATEMENT OF PAST CONTRACT DISQUALIFICATIONS AND DEFAULTS

Identify all instances of being disqualified, removed, determined to be a non-responsible bidder, debarred, terminated for default or otherwise prevented from bidding on, or completing, a federal, state, or local government project.

1. Have you ever been disqualified from any government contract?

Yes ☐

No ☒

2. If yes, explain the circumstances including date of public entity action, name of project, contract award amount and current contact person at public entity:

NONE, N/A


Signature and Title of Bidder or Authorized Representative
SEAN CASTILLO, PRESIDENT

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BID BOND FOR

KNOW ALL PERSONS BY THESE PRESENTS that [Bidder] TORO ENTERPRISES, INC.
 as PRINCIPAL, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a
corporation organized under the laws of the State of CT and
licensed by the State of California to execute bonds and undertakings as sole surety, as
SURETY, are held and firmly bound unto the City of Goleta, as City, in the penal sum of
ten percent (10%) of the total Base Bid Price on the base Contract Work, **excluding** any
Alternate Bid Items submitted by PRINCIPAL to CITY for the above stated project, for the
payment of which sum, PRINCIPAL and SURETY agree to be bound, jointly and severally, firmly
by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas PRINCIPAL has submitted a proposal to CITY for the above stated project.

NOW, THEREFORE, the penal sum guaranteed by this bond shall be forfeited to the City in the event of any of the following: (1) The aforesaid Principal withdraws said bid after the Bid Deadline contrary to applicable law; or (2) Principal fails, within ten (10) business days after receipt of written notice that the contract has been awarded to Principal and tender of the Contract, to, deliver to City the executed Agreement, in the prescribed form, in accordance with the bid as accepted, and file with the City all documents required in section 3-1.18 of the City's General Provisions.

In case suit is brought upon this bond, SURETY further agrees to pay all reasonable attorneys' fees and costs incurred by CITY in an amount fixed by the court. SURETY hereby waives the provisions of California Civil Code Sections 2845 and 2849.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals this
11 day of September _____, 2018.

PRINCIPAL: TORO ENTERPRISES, INC.


(Address) 2101 E. Ventura Blvd.
Oxnard, CA 93036

BY: (Signature and Title of Authorized Officer)
Sean Castillo, President

BY: N/A
(Signature and Title of Authorized Officer)

SURETY: TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

(Address) One Tower Square, Bond/5PB
Hartford, CT 06183

BY:  Samantha Fazzini, Attorney-In-Fact
(Signature and Title of Authorized Officer)

BY: N/A
(Signature and Title of Authorized Officer)

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment. Also, evidence of the authority of any person signing as attorney-in-fact must be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

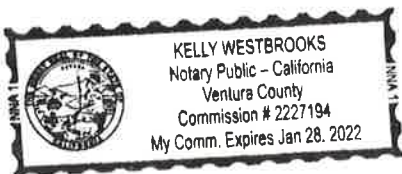
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Ventura
 On 9/12/18 before me, Kelly Westbrook Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Sean Castillo
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kelly Westbrook
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Bid Bond
 Document Date: 9/11/18 Number of Pages: 2
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Sean Castillo
☐ Corporate Officer — Title(s): Pres
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: Jojo

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

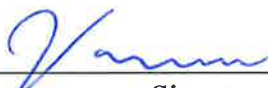

On **SEP 11 2018** before me, Vanessa Fong, Notary Public, personally appeared Samantha Fazzini who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature


Signature of Notary Public 



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Samantha Fazzini**, of **Los Angeles, California**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, **2017**.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, **2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2021**



Marie C. Tetreault
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this _____

day of _____

SEP 1 1 2018



Kevin E. Hughes
 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

**STATEMENT ACKNOWLEDGING PENAL AND CIVIL PENALTIES
CONCERNING THE CONTRACTOR'S LICENSING LAWS****[Business & Professions Code § 7028.15; Public Contract Code § 20103.5]**

The undersigned, a duly authorized representative of the Bidder, certify that I am aware of the provisions of California law and that I, or the company/individual on whose behalf this Bid is being submitted, hold a currently valid California contractor's license as set forth in the Business and Professions Code § 7028.15 and Public Contract Code § 20103.5 (and any updates).

A contractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Bidder: TORO ENTERPRISES, INC

License No.: 710580 Class A Expiration date: 8/30/19

DIR Registration No.: 1000002410

Date 9/20/18 Signature 

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DECLARATION OF ELIGIBILITY TO CONTRACT
[Labor Code §§ 1777.1 and 1777.7; Public Contract Code § 6109]

The undersigned, a duly authorized representative of the Bidder, certifies and declares that:

1. The Bidder is aware of Sections 1771.1 and 1777.7 of the California Labor Code, which prohibit a contractor or subcontractor who has been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, being awarded, or performing work as a subcontractor on a public works project for specified periods of time.
2. The Bidder is not ineligible to bid on, be awarded or perform work as a subcontractor on a public works project by virtue of the foregoing provisions of Sections 1771.1 or 1777.7 of the California Labor Code or any other provision of law.
3. The Bidder is aware of California Public Contract Code Section 6109 (and any updates.)
4. The Bidder has investigated the eligibility of each and every subcontractor the contractor intends to use on this public works project, and determined that none of them is ineligible to perform work as a subcontractor on a public works project by virtue of the foregoing provisions of the Public Contract Code, Sections 1771.1 and 1777.7 of the Labor Code, or any other provision of law.
5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20 day of SEPTEMBER, 2018, at OXNARD, California.

Signature: 

Name: SEAN CASTILLO

Title: PRESIDENT

Name of Company: TOZO ENTERPRISES, INC

Note: Signature must be acknowledged before a notary public. Attach appropriate acknowledgment.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

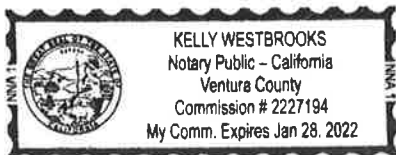
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Ventura
 On 9/20/18 before me, Kelly Westbrook, Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Sean Castillo
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kelly Westbrook
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Declaration of Eligibility to Contract
 Document Date: 9/20/18 Number of Pages: 1
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Sean Castillo
☒ Corporate Officer — Title(s): Pres
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: None

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

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**NON-COLLUSION DECLARATION
FOR
CROSSWALK AT SOUTH KELLOGG AVENUE**

SEAN CASTILLO

I am the PRESIDENT [title] of TORO ENTERPRISES, INC [name of bidder], the party making the foregoing bid, declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly, colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

9/20/18 [date], at OXNARD [city], CA [state]


(Signature and Title of Authorized Representative)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

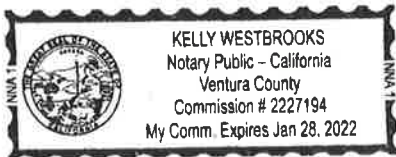
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Ventura
 On 9/20/18 before me, Kelly Westbrook, Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Sean Castillo
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kelly Westbrook
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Non-Collusion Declaration
 Document Date: 9/20/18 Number of Pages: 1
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Sean Castillo
☒ Corporate Officer — Title(s): Pres
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: None

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

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EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: City of Goleta 2. Contract DBE Goal: 3.0%
 3. Project Description: Crosswalk and RRFB System at S. Kellogg Avenue.
 4. Project Location: S. Kellogg Avenue, Goleta, CA
 5. Bidder's Name: Toro Enterprises, Inc. 6. Prime Certified DBE: ☐ 7. Bid Amount: \$129,964.50
 8. Total Dollar Amount for ALL Subcontractors: \$39,927.00 9. Total Number of ALL Subcontractors: 4

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount	
#9 (Portion)	Operated Cold Milling Machine and equipment move	#40089	Cindy Trump, Inc. (C.T.I.) P.O. Box 385 La Habra Ca. 90631 / #562-694-4015 Brianna Trump	\$3,450.00	
#2 (Portion)	Operated Sweeper (Clean Up)	#40089	Cindy Trump, Inc. (C.T.I.) P.O. Box 385 La Habra, Ca. 90631 / #562-694-4015	\$600.00	
Local Agency to Complete this Section				\$4,050.00	
21. Local Agency Contract Number: <u>9098</u>				15. TOTAL CLAIMED DBE PARTICIPATION 3.1 %	
22. Federal-Aid Project Number: <u>N/A</u>					
23. Bid Opening Date: <u>September 20, 2018</u>				<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.</p> <p><i>Craig Thompson</i> 9/21/2018 16. Preparer's Signature 17. Date Craig Thompson 805-483-4515 18. Preparer's Name 19. Phone Estimator / Project Manager 20. Preparer's Title</p>	
24. Contract Award Date: _____					
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.					
<i>[Signature]</i> 25. Local Agency Representative's Signature		9/29/18 26. Date			
JAMES WINSLOW 27. Local Agency Representative's Name		805.961.7577 28. Phone			
S.R. PROJECT MANAGER 29. Local Agency Representative's Title					

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract. Include additional copy with award package.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT

Cindy Trump Inc
P.O. Box 385
La Habra, Ca 90631
PH: (562)697-2286
FAX: (562) 697-2039
24 HR DISPATCH 714-501-0679
dispatch@wegrindasphalt.com



Contractor's License #754500	Dir # 1000008423	DBE Cert # 40089
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CONTRACTOR:	Toro Enterprises
JOB NAME:	Simi Valley
BID DATE:	6/18/2018
CONTACT:	
PHONE	
FAX:	EMAIL:

PLANER RENTAL RATES

Machine Type /Discription		Daily Rates 8 hr min rates / mob	4hr min w/ move in	Additional hours after 4 hr min
Operated Skidsteer 18 " Mini Grinder & Sweeper available upon request bucket/ breaker	8 hr min	\$ 1,400.00	\$ 1,350.00	\$ 175.00
	Mob	\$ 350.00		
TrackMill Wirtgen 120fi Front Loading Conveyor, Track mill machine, 48 " width cutter head, Mill up to 12" deep	8 hr min	\$ 2,800.00	\$ 1,650.00	\$ 300.00
	Mob	\$ 650.00	\$ 650.00	
Track Mill Wirtgen 210i 690 HP, Dual Engine, Front Loading Converyor, Track Mill Machine, 6' 6" & 7'2" Cutter Width , Mill up to 12" Deep.	8 hr min	\$4,400.00	\$ 2,500.00	\$ 525.00
	Mob	\$650.00	\$ 650.00	
Tack Mill Wirtgen 2100 720HP, Front Loading Converyor, Track Mill Machine, 7'-3" Cutter Width , Mill up to 12" Deep.	8 hr min	\$4,400.00	\$ 2,850.00	\$ 550.00
	Mob	\$650.00	\$ 650.00	
Pulverizer WR-240i Pulverizer / Mixer with 580 HP . Pulverizing for AC Depths up to 20" , depending on density	8 hr min	\$4,000.00	\$ 2,000.00	\$500.00
	Mob	\$650.00	\$ 850.00	
Elgin Street Sweepers High Dump High Dump Street Sweeper	8 hr min	\$1,400.00	\$ 750.00	\$175.00
	Mob	120.00 p/h	120.00 p/h	
Overtime is \$40.00 Per Hour / Per Man for hours after 8 hr min or Sat Work				
Double Time is \$80.00 Per Hour / Per Man after 12 hours or for Sunday or Holiday Work				

NO BACK CHARGES ACCEPTED FOR BREAKDOWNS

Important Information please read Underground Service Alert

It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2(Commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract or calling dispatch to schedule any machines, the lessee accepts all liabilities and responsibilities contained in the regional notification center law.

All work is to be performed under direct supervision and control of customer. Customer accepts all liability for any claims arising from work performed as directed.

RENTAL TERMS:

Each listed machine is provided operated. Each machine has a single operator. Job layout and planning are essential for efficeint use of machines. Customers are encourage to plan the job with the operator and other personnel before any work is started. Please feel free to contact our office with concerns about safety, guidance, clearances or production.

Overtime is more than 8 hours in one day or any work performed on a Saturday. Over 12 hours per day or all work on a Sunday is considered Double time.

ALL MACHINES require access to an on-site, metered water source or water truck.

All equipment shows up ready to work and with basic parts for any minor incidental problems that may arise. Our fleet is compromised of top of the line equipment that is at most only 5 years old. We take pride in having the best machines in the business. However, milling is hard on equipment and break downs are common. No Back Charges accepted for break downs.

All machines are not capable of pulverizing or mixing where rocks/ cobbles exceed a 3 inch max diameter. All underground utilities and covers must be identified before work begins.

Rental OPERATED GRINDER (4' machine) & STREET Sweeper
TOTAL \$4,050.00

[Back To Query Form](#)**Search Returned 1 Records**

Fri Sep 21 13:36:55 PDT 2018

Query Criteria

Certification Types: DBE

Firm ID: 40089

Firm ID	40089
DBA Name	CINDY TRUMP INC DBA LINDY'S COLD PLANING
Firm Name	CINDY TRUMP INC DBA LINDY'S COLD PLANING
Address Line1	625 W. MOUNTAIN VIEW
Address Line2	
City	LA HABRA
State	CA
Zip Code1	90631
Zip Code2	
Mailing Address Line1	625 W. MOUNTAIN VIEW
Mailing Address Line2	
Mailing City	LA HABRA
Mailing State	CA
Mailing Zip Code1	90631
Mailing Zip Code2	
Certification Type	DBE
E-Mail	wegrindasphalt@aol.com
Contact Name	CINDY TRUMP
Area Code	562
Phone Number	697-2286
Extension	
Alt Area Code	714
Alt Phone Number	904-1142
Extension	
Fax Area Code	562
Fax Phone Number	697-2039
Agency Name	LOS ANGELES COUNTY METRO TRANSPORTATION AUTHORITY (MTA)
Counties	10; 13; 14; 15; 19; 27; 29; 30; 33; 34; 35; 36; 37; 40; 42; 50; 53; 54; 55;
Districts	02; 03; 05; 06; 07; 08; 09; 10; 11; 12;
DBE NAICS	237310; 237990; 238910;
ACDBE NAICS	C9903 CONSTRUCTION CLEAN UP; C9905 CUTTING; C1901 ROADWAY EXCAVATION; C3901 ASPHALT CONCRETE; C1531 PLANE ASPHALT CONCRETE; C2201 FINISHING ROADWAY; C4201 GROOVE & GRIND PAVEMENT; C2401 LIME TREATMENT; C3910 PAVING ASPHALT (ASPHALT CONCRETE); C3990 RECYCLE, RECLAIM ASPHALT CONCRETE;
Work Codes	
Licenses	A General Engineering Contractor;
Trucks	

Gender	F
Ethnicity	CAUCASIAN
Firm Type	DBE

[Back To Query Form](#)

ATTACHMENT 2

Agreement with Filippin Engineering, Inc. for Construction Management Inspection and Testing (CMIT) Crosswalk at S. Kellogg Avenue Project (9098)

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
FILIPPIN ENGINEERING INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 2nd day of October, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **FILIPPIN ENGINEERING**, a California Corporation (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional Construction Management Inspection and Testing services for the Crosswalk at South Kellogg Park Project; and

WHEREAS, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

WHEREAS, CONSULTANT was approved by Council on December 20, 2016 and placed on a short list of pre-approved consultants for engineering design services after review of a Request for Qualifications using the Qualifications-Based Selection; and

WHEREAS, the City Manager is authorized to approve and execute this AGREEMENT pursuant to 03.05.240 of the Goleta Municipal Code. CITY and CONSULTANT agree as follows:

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Construction Management Inspection and Testing services in conjunction with Crosswalk at South Kellogg Park Project. Services shall generally include sawcutting, removals of asphalt concrete and concrete improvements, new sidewalk, bulb-outs, curb, gutter, striping, signage and Rectangular Rapid Flashing Beacon (RRFB as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$28,875 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is James Winslow, Senior Project Engineer. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to June 30, 2019, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within by the termination date of this Agreement.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Kelly R. Wheeler, P.E. QSD, is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

- Fugro Inc., Materials Testing - Ed Sullivan, Construction Services Manager

8. HOLD HARMLESS AND INDEMNITY

(a) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and

against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

9. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance

Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.

- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.

- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

10. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

11. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

12. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

13. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach

of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

14. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

15. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

16. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

17. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

18. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

19. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

20. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

21. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

22. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

23. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

24. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

25. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CONSULTANT: Attention: Kelly R. Wheeler, P.E. QSD
Filippin Engineering, Inc.
354 South Fairview Ave., Suite D
Goleta, CA 93117

This AGREEMENT may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

Consistent with 24 CFR 570.503(b)(6), suspension or termination may occur if the subrecipient (CONSULTANT) materially fails to comply with any term of the CDBG award, and that the agreement may also be terminated for convenience (also see 24 CFR 85.43–85.44 and 84.62).

The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the CITY.

City of Goleta
Public Works Department and Filippin engineering, Inc.
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Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-1282 (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at §570.502.

30. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

For the Scope of Work, CITY has a Disadvantaged Business Enterprise (DBE) goal of 3.00%. CONSULTANT is required to submit to CITY completed Caltrans Form 10-01 reflecting the DBE commitment by CONSULTANT. CONSULTANT to submit Caltrans Form 10-02 CONSULTANT Contract DBE Information to the CITY prior to contract award.

CONSULTANT is required to include in applicable Subcontracts the DBE contract language show in the attached Exhibit Standard Agreement for Subconsultant/DBE Participation (Exhibit C).

A DBE may be terminated only with written approval by CITY and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting CITY's consent for the proposed termination, the prime must meet the procedural requirements specified in 49 CFR 26.53(f).

31. CONTINGENT FEE

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

32. RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., Federal regulations specified in OMB Circulars A-21, A-87 and A-122, as applicable, and 24 CFR 570.502, 24 CFR 570.506, Subpart K of 24 CFR Part 570, and 24 CFR 84.21-28 that are pertinent to the Project and activities to be funded under this acknowledgement, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the CONSULTANT, subconsultants, and the CITY shall maintain and retain - for five years after grantees or subgrantees make final payments and all other pending matters are closed - all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make

such materials available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the contract. The state, the State Auditor, CITY, CDBG, HUD, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested Subcontracts in excess of \$2,000 shall contain this provision.

33. DISPUTES

Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the CITY's Project Manager and Public Works Director, who may consider written or verbal information submitted by the CONSULTANT.

Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the CITY Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

34. AUDIT REVIEW PROCEDURES

Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the CITY's Chief Financial Officer.

Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the CITY's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by the CITY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

35. EQUIPMENT PURCHASE

Prior authorization in writing, by the CITY's Project Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the CITY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the CITY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit the CITY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the CITY and the CONSULTANT , if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the CITY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

36. INSPECTION OF WORK

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

37. SAFETY

The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the project site.

Pursuant to the authority contained in Section 591 of the Vehicle Code, the CITY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

38. OWNERSHIP OF DATA

Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the CITY; and no further agreement will be necessary to transfer ownership to the CITY. The CONSULTANT shall furnish the CITY all necessary copies of data needed to complete the review and approval process.

It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the CITY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the CITY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the CONSULTANT.

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

The CITY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

Any subcontract in excess of \$2,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

39. CONFIDENTIALITY OF DATA

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

Permission to disclose information on one occasion, or public hearing held by the CITY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

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

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

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

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

40. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

41. EVALUATION OF CONSULTANT

The CONSULTANT'S performance will be evaluated by the CITY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

42. NON DISCRIMINATION

The CONSULTANT, its CONSULTANTS and subconsultants agree to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR, Part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities, the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) which requires certain federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people, and the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225).

43. DEBARMENT AND SUSPENSION CERTIFICATION

The CONSULTANT'S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension

Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the CITY.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

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

44. STATE PREVAILING WAGE RATES

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

Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

45. CONFLICT OF INTEREST

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

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

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

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

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

46. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

This is in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

47. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT agrees to the following:

- (a) Acknowledgement Subject to Executive Order 11246: Recipient Department hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60 which is paid for in whole or in part with funds obtained from the Oversight Department, the following equal opportunity clause:
 - (1) The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. The CONSULTANT will take affirmative action to insure that applicants are employed, without regard to race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT

agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.

- (2) The CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, sex, marital status, mental or physical disability, age, familial status, sexual orientation or national origin.
- (3) The CONSULTANT shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The CONSULTANT shall incorporate or cause to be incorporated the foregoing provisions into any subcontract for work covered by this acknowledgement so that such provision will be binding upon each subconsultant, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

- (b) Acknowledgement Subject to Provisions of 24 CFR 135. The CONSULTANT and its subconsultants shall be responsible for complying with the provisions of 24 CFR, Part 135, also known as Section 3, Employment opportunities for business and lower income persons in connection with assisted projects, a copy of which is on file with the Oversight Department which will be duplicated for CONSULTANT upon request.

To the extent that they are otherwise applicable, City and CONSULTANT shall comply with:

- (a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60.

48. CDBG REQUIREMENTS

During the performance of this acknowledgement, consultant agrees to comply with the following federal provisions:

- (a) Age discrimination act of 1975 and section 504 of the rehabilitation act of 1973 prohibits discrimination on the basis of age or with respect to an otherwise qualified handicapped individual, as provided in section 504 of the rehabilitation act of 1973, will also apply to any such program or activity.
- (b) CONSULTANT must also comply with all regulations of the Americans with Disabilities Act (ADA) of 1990 (42 usc §§ 12101 et. seq.).
- (c) Section 3 of the housing and community development act of 1968, as amended, 12 USC §§ 1701 et. seq., compliance in the provision of training, employment and business opportunities requires that the work to be performed under this acknowledgement is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of section 3 of the housing and urban development act of 1968, as amended, 12 USC § 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contract for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project. The parties will comply with the provisions of section 3 and the regulations issued pursuant thereto by the secretary of HUD set forth in 24 CFR § 135, and all applicable rules and orders of HUD issued thereunder before executing this acknowledgement. The parties certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- (d) LOBBYING CERTIFICATION. CONSULTANT MUST INCLUDE THE LANGUAGE OF THIS CERTIFICATION IN ALL SUBCONTRACTS; ALL SUBCONSULTANTS MUST CERTIFY AND DISCLOSE ACCORDINGLY.
- (e) CONSULTANT agrees to comply with the following requirements insofar as they apply to the performance of this acknowledgement:
 - i. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.
 - ii. The regulations in 24 CFR art 58 assuming environmental review, decision making and action responsibilities.
 - iii. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - iv. Compliance with Public Law 88-352, which is title VI of the Civil Rights Act of 1964 and implementing regulations in 24 CFR part 1.
 - v. 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 (Pub. L. 94A 163, 89 Stat. 871).

- vi. Program Income. The Subrecipient (CONSULTANT) shall report quarterly, all program income (as defined at 24 CFR 570.500(a) and 570.504 (c)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient (CONSULTANT) shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient (CONSULTANT) may use such income during the contract period for activities permitted under this contract and shall reduce requests for an additional fund by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee (City) within thirty (30) days after expiration of the term of the contract.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Michelle Greene, City Manager

Gino Filippin, President

ATTEST

Deborah Lopez, City Clerk

Kelly R. Wheeler, Vice President

APPROVED AS TO FORM



Winnie Cai, Assistant City Attorney

EXHIBIT A SCOPE OF WORK

PROJECT UNDERSTANDING / ASSUMPTIONS

Consultant understands that this project includes various items of work to complete the construction of a crosswalk across S. Kellogg Avenue adjacent to the Hollister/Kellogg Park entrance. The various items of work include sawcutting, removals of asphalt concrete and concrete improvements, new sidewalk, bulb-outs, curb, gutter, striping, signage and Rectangular Rapid Flashing Beacon (RRFB), as defined in the contract documents. The construction duration per the contract documents is 45 working days, and work shall be conducted during standard working hours (7:30am-4:30pm), Monday through Friday, with 8 hour assumed working days. Although provisions for night work are covered in the specifications, the Consultant understands that no area of the project is designated for night work.

Consultant shall attend a brief coordination prior to the project, part-time construction management, part-time construction observation during the work, and part-time construction management at project conclusion to assemble the closeout documentation. Consultant understands that the project is federally funded, so it will require full project documentation and labor compliance monitoring. Consultant shall be flexible in working with City staff to meet the specific needs that may arise, Consultant understands that payment of prevailing wage is required for the project and Consultant shall will comply with all prevailing wage requirements.

PROJECT APPROACH

Consultant shall provide part-time construction management support and part-time construction observation. Although the Contract Duration is defined as 45 working days, Consultant shall assume only 30 working days of field observation will be required. Consultant shall have a budgeted amount for materials testing, anticipating potential compaction tests and concrete cylinders for QA. This proposed effort shall be dependent upon the performance of the CONSULTANT and/or direction from City staff; during the course of the project, Consultant shall be open to adjustments in the level of management or inspection required, based on City direction.

Pre-construction Services

The Construction Management team shall run a preconstruction coordination meeting with City and CONSULTANT staff, photo document the existing conditions at the project site, establish the necessary project document control files, and review the contract documents prior to starting the work.

Construction Services

The Construction Inspector shall monitor the course of the work, coordinate construction activities, and record daily documentation of the project including labor, equipment, and

materials. This shall include a daily report and photo documentation. For purposes of this proposal, it is estimated construction shall run for 30 working days and shall be concurrent with the construction observation services that Consultant shall be performing at the adjacent park. Consultant staff realizes all project documentation shall be separate from the park project and believes that the observation and onsite reporting can be performed in approximately 2 hours per day for the assumed 30 working days.

The Construction Management Team (Resident Engineer, Assistant Construction Manager, and Office Engineer) shall perform contract management and documentation control consistent with federal funding requirements. Consultant shall consistently follow procedures outlined in the Local Assistance Procedures Manual. For this project, Consultant shall anticipate providing the following deliverables:

- Progress pay estimate review and recommendation for approval (assume 2 pay requests)
- Submittal management (assume 10 submittals)
- Change Order management (assume 2 CCO's, including a Final Balancing CCO)
- RFI management (assume 2 RFI's)
- Weekly progress meetings (assume 9 meetings)
- Reporting and Record Keeping (including review & organization of Contractor records, and other Contractor correspondence)
- Labor Compliance Monitoring (including tracking, collecting, spot checking certified payroll and performing labor interviews)
- Materials Testing (performed by subconsultant; assumed to be compaction tests for subgrade and set of cylinders for concrete pour)
- Federal Community Development Block Grant (CDBG) reporting forms and submittals.

The Construction Management team shall coordinate with the City's Project Manager for any other tasks necessary in the performance of the work.

Post Construction Services

After construction of this site is complete, the Construction Inspector shall turn over clear, organized project records including daily reports, quantity calculation records, photo documentation, as-built records, and any other construction documentation items. The Construction Manager shall organize the standard project document control package based on Caltrans Local Assistance Procedures and CDBG requirements, to include the necessary Meeting Minutes, Progress Pay Estimate documents, and change management documents, correspondence, etc.

PROPOSED FEE AND METHOD OF PAYMENT

Consultant shall have estimated construction management services as part-time for the 45-day duration, and Inspector services at part-time for an estimated 30-day duration. Actual time spent on the project shall be in direct relation to the performance of the


Contractor and scope coordinated with the City, but any anticipated efforts beyond the proposed budget shall be coordinated with City staff.

**EXHIBIT B
SCHEDULE OF FEES**

Classification	Hourly Rate
Principal-in-Charge/ Resident Engineer	\$185.00
Senior Inspector Assistant RD/ Assistant CM	\$140.00
Office Engineer & Labor Compliance	\$ 90.00

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section			
17. Local Agency Contract Number: _____		11. TOTAL CLAIMED DBE PARTICIPATION	%
18. Federal-Aid Project Number: _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 	
19. Proposed Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
20. Local Agency Representative's Signature _____	21. Date _____	12. Preparer's Signature _____	13. Date _____
22. Local Agency Representative's Name _____	23. Phone _____	14. Preparer's Name _____	15. Phone _____
24. Local Agency Representative's Title _____		16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____
8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount			
Local Agency to Complete this Section						
20. Local Agency Contract Number: _____	14. TOTAL CLAIMED DBE PARTICIPATION		\$			
21. Federal-Aid Project Number: _____			%			
22. Contract Execution Date: _____	<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> <p><i>Kelly Wheeler</i></p> <p>15. Preparer's Signature _____ 16. Date _____</p> <p>17. Preparer's Name _____ 18. Phone _____</p> <p>19. Preparer's Title _____</p>					
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.						
23. Local Agency Representative's Signature _____						
24. Date _____						
25. Local Agency Representative's Name _____						
26. Phone _____						
27. Local Agency Representative's Title _____						

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.