



TO: Mayor and Council members

FROM: Charles W. Ebeling, Public Works Director

CONTACT: James Winslow, Senior Project Engineer

SUBJECT: Agreement with MNS Engineers and Amendment to Agreement with Kimley-Horn and Associates for the Rectangular Rapid Flashing Beacons at Chapel Street and Pedestrian Hybrid Beacons at Kingston Avenue Project (Project No. 9058)

RECOMMENDATION:

- A. Authorize reallocating a budget appropriation of \$56,000 from the Measure A Concrete Maintenance Project to the Rectangular Rapid Flashing Beacons at Chapel Street and Pedestrian Hybrid Beacons at Kingston Avenue Project account; and
- B. Award and authorize the City Manager to execute a Professional Design Services Agreement with MNS Engineers, Inc., in an amount not-to-exceed \$70,000 for construction management and inspection services with a termination date of December 31, 2022; and
- C. Award and authorize the City Manager to execute Amendment No. 3 to Professional Design Services Agreement No. 2017-130 with Kimley-Horn and Associates, Inc., to increase the contract authority by \$6,000, for a new total contract amount of \$67,750 and extend the agreement to December 31, 2022.

BACKGROUND:

The Rectangular Rapid Flashing Beacons (RRFB) at Chapel Street and Pedestrian Hybrid Beacons (PHB) at Kingston Avenue Project (Project) is included as part of the City's 5-year Capital Improvement Program (CIP) and identified as Project No. 9058. The Project improvements include installing a RRFB system at Chapel Street crossing Hollister Avenue and replacing older flashing beacons at Kingston Avenue crossing Calle Real with a PHB system.

The City applied for and received Highway Safety Improvement Program (HSIP) grant funding for the Project in the amount of \$237,780. In December 2017, the City Council approved professional design services agreement No. 2017-130 with Kimley-Horn and Associates (Kimley-Horn) to provide design for the Project. Kimley-Horn completed

design and in December 2019 Public Works staff submitted a Request for Authorization to Caltrans for the construction funding portion of the HSIP grant.

On April 7, 2020, the City Council authorized the Project advertisement and bidding. On June 16, 2020, City Council authorized award of the construction contract for the Project to the lowest responsible bidder, Lee Wilson Electric Company, Inc.

DISCUSSION:

Agreement with MNS for Construction Management

Following the bid opening and City Council authorizing the construction contract award, Public Works issued a Request for Proposals (RFP) for the construction management, inspection, and materials certification services following the Caltrans Local Assistance Procedures Manual (LAPM). Public Works followed the LAPM guidelines because the construction work is part of the Federal HSIP grant funding program. On July 30, 2020, Public Works advertised the RFP on the City's website, Construction eBidboard, as well as sending the RFP to the construction management firms listed on the City's Pre-Authorized Qualified Consultant List (dated December 3, 2020). The City received six proposals from local qualified engineering construction management firms. A selection team of three individuals reviewed, scored, and ranked the proposals based on their qualifications including, but not limited to: key staff's knowledge and experience, availability of key personnel and resources, experience and demonstrated competence on similar projects in scope and magnitude, and familiarity with the project scope and Federal HSIP funding requirements.

Public Works recommends the City Council authorize the City Manager to execute a professional design services agreement with MNS Engineers, Inc. (MNS) in a not-to-exceed amount of \$70,000 (Attachment 1). Public Works is recommending MNS due to their considerable experience in managing similar projects, including two recent City's projects on Hollister Avenue, the PHB located at the Goleta Community Center and the RRFB at Orange Avenue. MNS managed these and numerous other projects in accordance with the Caltrans Construction Manual, LAPM guidelines, and provided the right staffing resources. MNS has not participated in the planning or design phases of the Project.

Amendment No. 3 to Agreement No. 2017-130 (Attachment 2)

On December 19, 2017, the City Council authorized a Professional Design Services Agreement with Kimley-Horn for professional design, environmental, right-of-way and public outreach services for the Project (Attachment 3). On December 18, 2018, the City Council authorized Amendment No 1 (Attachment 3) to extend the term of the agreement from December 31, 2018, to December 31, 2020. On June 18, 2019, the City Council authorized Amendment No. 2 (Attachment 3) to provide additional compensation in the amount of \$6,750 for a new not to exceed amount of \$61,750. The additional compensation covered additional work to clear utilities and adjust the final design to meet

the slopes and grades, and to address time delays and extra reviews caused by significant City staffing changes, heavy project workload, and limited resources.

This third amendment to the agreement with Kimley-Horn results from changes in the project schedule and additional work that Kimley-Horn provided in the analysis of bids for construction. On December 26, 2019, Public Works submitted a Request for Authorization to Caltrans requesting authorization to use the construction phase HSIP grant funding. On January 21, 2020, Caltrans authorized the construction funding in the amount of \$195,480. Public Works proceeded to prepare the City Council agenda report requesting authorization to advertise the Project. However, staffing changes, limited resources, and the COVID-19 pandemic caused disruption to the schedule. As a result, the plans and specifications were not advertised for bid until April 2020 and the RFP for construction management services was not issued until July 2020, which delayed the project schedule.

Also, as was previously explained to the City Council when the construction contract was awarded, the lowest construction bid received was almost double the engineer's estimate of probable costs, and more than \$140,000 over the budget staff had allocated, including contingencies. Given the unexpectedly high bids, staff asked Kimley-Horn to perform additional work assisting with requests for information from the bidders, preparing addenda, and a conducting a thorough evaluation of the contract documents, bids submitted, their own engineers estimate of probable cost, and research into recent bid results for a current comparison. Staff used existing authorization in the agreement with Kimley-Horn that had been planned for the remaining construction support services and preparing the record drawings to accomplish the additional bidding and bid evaluation tasks before the construction contract was awarded.

Public Works is recommending that the City Council authorize increasing the contract authority with Kimley-Horn by \$6,000 for a total not-to-exceed amount of \$67,750, to replace the funds still needed for construction design support services and preparing the record drawings, and extend the contract term to cover the revised anticipated project duration.

Next Steps - Construction

To keep the project moving forward, Public Works is reviewing and approving time critical submittals for Project equipment, such as the poles, before a construction management team is under contract. The poles have a long-lead time of approximately 12-16 weeks once ordered. The contractor has received the City's approved submittal, has ordered the poles, and is waiting on the manufacturer to provide an estimated delivery schedule. Once the estimated delivery schedule is provided, the contractor will submit a preliminary construction schedule; at this time, construction is anticipated to begin in December 2020. The construction management team will be on board to review, approve, and track the remaining submittals and oversee the construction activities and inspection.

FISCAL IMPACTS:

The total estimated cost for the Project is \$729,238, based on a \$463,751.50 construction contract, plus 20% contract change order authority, \$70,000 construction management, and additional design support during construction costs as shown in the following table.

Project Cost Estimates

Project Components	Estimated Costs	Funding Source	Funding Amounts
Design (prior)	\$ 34,736	General Fund	\$ 102,838
Design (Consultant)	\$ 78,000	Measure A (205)	\$ 342,620
Construction	\$ 463,752	HSIP Grant (417)	\$ 237,780
Construction Contingency	\$ 92,750	Maintenance – Concrete (205) Proposed	\$ 56,000
Construction Management	\$ 70,000		
Total:	\$ 739,238	Total:	\$ 739,238

Project Funding

There is sufficient funding in the Project budget for the authorized construction contract and contingency authority, but not for the complete construction management scope of work or the design support during construction and record drawings scope. There is \$30,000 budgeted for construction management services. Public Works performed an independent cost analysis showing construction management services at approximately \$60,000. Public Works negotiated with the highest ranked qualified firm and arrived at a negotiated price not-to-exceed \$70,000. Therefore, additional funding of \$56,000 is needed to support the \$6,000 for design support during construction and record drawings, \$40,000 for construction management activities, and an additional \$10,000 in construction management contingency. Public Works recommends reallocating funds of \$56,000 from the Measure A, Maintenance – Concrete account (205-50-5800-51071) to the project fund (205-90-9058-57071). The table below summarizes the Fiscal Year 20/21 project budget, previous encumbrances, actual expenses to date, and the requested reallocation.

CIP No. 9058 RRFB at Chapel St and PHB at Kingston Ave				
Account*	Fund Type	FY 2020-21 Adopted Budget	YTD Actual/ Encumbrance	Available Balance
101-90-9058-57071	General Fund	\$ 102,838	\$ 93,047	\$ 9,791
205-90-9058-57070	Measure A	\$ 4,511	\$ 386	\$ 4,125
205-90-9058-57071	Measure A	\$ 287,920	\$ 292,975	(\$ 5,055)
417-90-9058-57071	HSIP Grant	\$ 195,269	\$ 170,480	\$ 24,789
	Current Total	\$ 590,538	\$ 556,888	\$ 33,650
Requested Reallocation 205-90-9058-57071	Measure A	\$ 56,000	\$ 0	\$ 56,000
	Total	\$ 646,538	\$ 556,888	\$ 89,650

The FY 20/21 Adopted Budget included \$150,000 programmed in the Measure A, Maintenance – Concrete account. Reallocating \$56,000 will adjust the accounts budget to \$94,000.

ALTERNATIVES:

The City Council may choose to not authorize the City Manager to execute a consultant services agreement with MNS. Doing so would require Public Works to shift current workloads and priorities to attempt to cover the construction management, inspection, and materials certification scope of work. This would result in significant delays to current staff workload and projects in the design phase, and potential issues and additional costs during project construction. The City Council may choose to not authorize the City Manager to execute Amendment No. 3 with Kimley-Horn. Public Works would not have the capacity to provide design support services during construction or prepare the final project Record Drawings.


Reviewed By:

Legal Review By:

Approved By:


Kristine Schmidt
Assistant City Manager


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

1. Agreement for Professional Design Services Between the City of Goleta and MNS Engineers, Inc.
2. Amendment No. 3 to a Professional Design Services Agreement 2017-130 Between the City of Goleta and Kimley-Horn and Associates, Inc.

3. Agreement No 2017-130 and Amendment Nos. 1 and 2 for Professional Design Services Between the City of Goleta and Kimley-Horn and Associates, Inc. (available online only)

Attachment 1

Agreement for Professional Design Services Between the City of Goleta
and MNS Engineers, Inc.

Project Name: Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston and RRFB at Chapel Project

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
MNS ENGINEERS INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 5th day of November, 2020, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and MNS ENGINEERS, INC., a **California Corporation** (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional construction management and inspection services for the CIP No. 9058 – Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston and RRFB at Chapel 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, the CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260 by issuing a formal Request for Proposals on August 19, 2020; and

WHEREAS, the City Council, on this 5th day of November, 2020, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

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 Design Services in conjunction with the construction management, inspection, and materials certification services. Services shall generally include construction management, inspection, and materials

certification services for the 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, including the fixed fee, shall **SHALL NOT EXCEED** the sum of \$70,000 (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 December 31, 2021, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager/Contract Administrator 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/Contract Administrator, 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.

(c) The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Schedule of Fees, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY's approved overhead rate set forth in the Schedule of Fees. In the event, that CITY determines that a change to the work from that specified in the Schedule of Fees and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by CITY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "a" shall not be exceeded, unless authorized by AGREEMENT amendment.

(d) The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.

(e) In addition to the allowable incurred costs, CITY will pay CONSULTANT a fixed fee of \$6,363.64 as delineated in Exhibit B. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.

(f) Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Schedule of Fees.

(g) When milestone cost estimates are included in the approved Schedule of Fees, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Project Manager/Contract Administrator before exceeding such cost estimate.

(h) Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, CITY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Section 28 Termination By City.

(i) No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.

(j) CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by CITY's Project Manager/Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Schedule of Fees and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due CITY including any equipment purchased under the provisions of Section 33 Equipment Purchase and Other Capital Expenditures. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to CITY's Finance Department at the following address (email):

City of Goleta
Accounts Payable
c/o Shawna Stokes
130 Cremona Dr., Ste B
Goleta, CA 93117
ap@cityofgoleta.org

City of Goleta
PWD and MNS Engineers, Inc.
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(k) For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable. The maximum total cost as specified in Paragraph "a" shall not be exceeded, unless authorized by AGREEMENT amendment.

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/CONTRACT ADMINISTRATOR 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/Contract Administrator," as that staff person is designated by CITY from time to time, and who presently is James Winslow. Project Manager/Contract Administrator 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 December 31, 2022, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by CITY. 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/Contract Administrator.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Bill Callaghan, P.E., QSD/QSP 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.

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 general 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.

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. October 2018), 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.

26. NOTICES

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 CITY: Attention: Michelle Greene, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: William J. Callaghan,
PE Senior Construction Manager
MNS Engineers, Inc.
201 N. Calle Cesar Chavez, Suite 300
Santa Barbara, CA 93103

27. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

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.

28. TERMINATION BY CITY

(a) This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

(b) CITY may temporarily suspend this AGREEMENT, at no additional cost to CITY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If CITY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.

(c) Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to CITY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.

(d) In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

29. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

(a) The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

(b) The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(c) Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITYCY.

(d) When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

30. RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to,

the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. CITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

31. AUDIT REVIEW PROCEDURES

(a) Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by CITY'S Chief Financial Officer.

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

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

(d) CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

(e) CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY Contract Administrator to conform to the Work Paper Review

recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) -the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement

purposes under this AGREEMENT.

4. CONSULTANT may submit to CITY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

32. SUBCONTRACTING

(a) Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.

(b) The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

(c) Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.

(d) CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the CITY.

(e) Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

33. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

(a) Prior authorization in writing by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

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

(c) Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit 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 CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY.
2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

34. STATE PREVAILING WAGE RATES

(a) No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

(b) The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at CITY construction sites, at CITY facilities and at off-site locations that are set up by the construction contractor or one of

its subcontractors solely and specifically to serve CITY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

(c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

(d) Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by CITY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the CITY Contract Administrator

by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by CITY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform CITY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to CITY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by CITY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

(e) When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the CITY Contract Administrator.

(f) Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the CITY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in

failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, CITY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If CITY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if CITY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by CITY.

(g) Hours of Labor Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the CITY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815

(h) Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

35. CONFLICT OF INTEREST

(a) During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this AGREEMENT or any ensuing CITY construction project. The

CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing CITY construction project which will follow.

(b) CONSULTANT certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY ordinance or State law.

(c) 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.

(d) The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

36. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

37. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

(a) The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

(b) During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and

treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

(d) CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause .

(e) CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement .

(f) CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT .

(g) The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest .

(h) The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

38. DEBARMENT AND SUSPENSION CERTIFICATION

(a) 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 or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. 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.

(b) Any exceptions to this certification must be disclosed to CITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

(c) Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

39. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(a) This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the CITY in a good faith effort to achieve California's statewide overall DBE goal.

(b) The goal for DBE participation for this AGREEMENT is 0.0 %. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10O1: Consultant Proposal DBE Commitment, or in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT (Exhibit C). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met (Exhibit C).

(c) CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

(d) DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The CITY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the

termination of this AGREEMENT or such other remedy as the CITY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible

(e) A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(f) Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the CITY's Contract Administrator.

(g) A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

(h) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

(i) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

(j) CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the

date of work performed by their own forces along with the corresponding dollar value of the work.

(k) Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

(l) If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within thirty (30) calendar days.

(m) After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.

(n) Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

40. FUNDING REQUIREMENTS

(a) It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.

(b) This AGREEMENT is valid and enforceable only if sufficient funds are made available to CITY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

(c) It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.

(d) CITY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

41. CHANGE IN TERMS

(a) This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

(b) CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY's Contract Administrator.

(c) There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

42. CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CITY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

43. DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

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

(b) Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by CITY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

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

44. INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit CITY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

45. SAFETY

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

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

46. OWNERSHIP OF DATA

(a) It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

(b) Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.

(c) Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except

the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

(d) 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).

(e) 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.

47. CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

(a) If claims are filed by CITY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with CITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

(b) CONSULTANT's personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

(c) Services of CONSULTANT's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

48. CONFIDENTIALITY OF DATA

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

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

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

(d) CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this

AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

49. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, 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 CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

50. EVALUATION OF CONSULTANT

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

51. RETENTION OF FUNDS

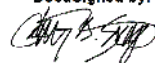
No retainage will be withheld by CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants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

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

Michelle Greene, City Manager

CONSULTANT

DocuSigned by:

D7A4F4B73D14488...

James Salvito, President

ATTEST

Deborah Lopez, City Clerk

DocuSigned by:
Shawn Kowalewski MNS Engineers
B01F8FF54231488...
Shawn Kowalewski, Vice President

APPROVED AS TO FORM:
MICHAEL JENKINS, CITY ATTORNEY

DocuSigned by:
Winnie Cai
A1BF8F896161498...
Winnie Cai, Assistant City Attorney

EXHIBIT A SCOPE OF WORK

Construction Management, Inspection and Material Certification Description of Services

Task 1.0: PRE-CONSTRUCTION PHASE SERVICES

Kickoff Meeting – The Consultant shall arrange and participate in the kickoff meeting to establish a Project Management Team (PMT) consisting of Consultant staff, City staff, utilities, and design consultant staff. The purpose of this meeting is to review the construction contract documents, clarify issues, establish public interaction, establish working relationships, and review and verify mutual understanding of contract administration issues.

Review Contract Documents – The Consultant shall review the construction contract and specifications to verify that obligations placed upon the contractor are consistent with the City's needs and expectations and that these obligations are sufficient to allow the consultant to work effectively with the contractor in the City's best interests.

Conformed Set – The Consultant shall review the construction plans and specifications and prepare a conformed set of documents – Plans and Specifications – that include the addendums, RFIs, Contractor's bid proposal, and Contract.

Contract Administration – The Consultant shall establish record keeping, documentation, and contract administration systems that are consistent with the Caltrans Local Assistance Manual **Federal HSIP requirements**, and meet the City's requirements.

Submittal Processing – The Consultant shall establish, with the assistance of the Design Engineer, a list of the submittals that will be required of the contractor with due dates to support expected schedule activities and review those submittals. The City will review and approve submittals for the longer lead time items such as poles and cabinets prior to establishing an Agreement for CM services.

Preconstruction Conference – A preconstruction conference shall be scheduled soon after the Notice to Proceed has been issued. The Consultant shall develop a preconstruction agenda and submit to the City for review a minimum of five (5) days prior to the preconstruction conference. All appropriate parties shall be invited, included the Contractor, City staff, other involved entities and utility companies. The Consultant shall review with the contractor, on an overall basis, the plans and specifications for the contractor's work, and its interrelationship with other work that will take place in the construction vicinity, in an effort to gain the contractor's full understanding of the Project.

The Consultant shall distribute meeting minutes to all parties in attendance. The meeting must include the contractor's responsibility toward such items as:

- Safety/Traffic control
- Public relations
- Permit and environmental
- Site access
- Agreements
- Labor compliance
- Federal Requirements
- DBE Requirements
- Order of work
- Materials certification
- Weekly meetings
- Submittals and RFI's
- Quality control
- Stormwater pollution controls
- Procedures for handling extra work or change of conditions
- Establish partnering session work or change of conditions
- Schedule updates
- Progress pay requests
- Highlight any critical construction items specific to this project
- Dispute procedures

Task 2.0: CONSTRUCTION PHASE

Coordination of Contract Execution – The City and the Consultant shall determine a mutually agreed upon time to mobilize the Consultant to the Project site and the Consultant shall mobilize the field inspector to the Project site as soon as construction is ready to begin. The Consultant shall implement the record keeping documentation and contract administration systems developed during the preconstruction phase.

Project Communication and Coordination – The Consultant shall be in charge of facilitating project communication and coordination with the City, the design engineer, emergency services, utilities, local business, property owners and residents, the contractor, and materials testing technicians throughout the construction phase. The weekly progress meetings will help the construction team to stay abreast of project issues and progress. A monthly progress report will be submitted to the City.

Utilities – The coordination with utility companies is crucial to delivering the project.

Property owners and Businesses – Coordination and clear, concise communication with the owners and businesses adjacent to the work areas will also be extremely crucial to successfully delivering the project.

Project Schedule – The Consultant shall monitor the contractor's compliance with the agreed upon scheduling requirements.

Submittal and Request For Information (RFI) Management – The Consultant shall maintain a log of, and manage, shop drawings, samples, submittals, and RFI's in order

to determine that:

1. All short-term look-ahead schedules contain critical submittal dates and the logs reflect the same;
2. Submittals from the contractor are received, logged, and processed timely;
3. Submittals are reviewed in a timely fashion by the appropriate reviewing body and returned to the contractor to minimize lost production time;
4. Logs are updated on a regular basis;
5. Shop drawings and Temporary Water Pollution Control Plan (WPCP) have been approved and returned before associated work begins;
6. Copies of all submittals, samples, and RFI's are maintained in the hard copy and electronic file (City standard electronic filing system).

Change Order Management – The Consultant shall review the Contractor's change orders to ensure that project issues are brought to the surface and addressed in a timely manner. The Consultant shall investigate all proposed change orders submitted by the contractor and ensure the City has agreed to the Contractor's change order. Change order submittals will include supporting records. The Consultant shall review necessary and desirable changes to the Project, and advise the City's project manager of change order impacts. The Consultant shall:

1. Assemble documentation to include such items as inspection reports, test reports, drawings, sketches, photographs, and other materials as required.
2. Maintain a change order log as a means to tracking change order proposals through the review and approval process. Consultant will establish files for potential change orders or claims so as to accumulate documentation should the issues result in a change order or claim.

Quantity Calculations and Progress Estimates – The Consultant shall ensure quantity calculations are complete, accurate and submitted each month to process the contractor's estimate. The Construction Inspector shall keep track of item quantities and any extra work performed and shall assist the Resident Engineer to ensure accurate and timely monthly estimates for the project. The Construction Inspector shall reach an agreement on daily quantities with the Contractor's foreman to identify potential disputes as soon as possible to the work in questions. The Consultant shall review the contractor's monthly Request for Payment and recommend approval for payment to the City.

Construction Observation/Inspection – The Consultant shall be responsible for inspection and documentation of all construction tasks including: detours; construction staging; traffic control; pedestrian and bicycle access; drainage; NPDES requirements; lane closures; and pavement delineation.

Site Documentation – Consultant shall take pre-construction site photos to document the existing condition of the project limits and any haul routes. The Consultant shall document construction as it progresses. All photos shall be logged and filed in the project files.

Quality Assurance and Materials Testing – The Consultant shall review and certify the materials certificates in accordance with the construction contract plans and

specifications. The Consultant shall maintain a file for all material certifications.

WPCP and Permits – The Consultant shall monitor the construction and coordinate with permitting agencies to ensure all work items are performed in accordance with the permit requirements.

Reporting and Record Keeping – To accurately document the progress of the project and to assist in the management of its completion, The Consultant shall establish a file or record-keeping system in accordance with the City's, Caltrans, and Federal policies and procedures. A list of the more important items that will be required as part of the record-keeping system include, but are not limited to; Daily dairies, Meeting minutes, Correspondence, Plan submittals, Certificates of compliances, Records of material testing, Photo log, CCO log, Submittal log, Contact Change Orders, NOPC's, and HSIP grant items. The Consultant shall be responsible to ensure the City has access to the most current electronic documents included in the Consultant's record-keeping system.

Safety – The contractor has sole responsibility for compliance with safety requirements on the construction contract. The Consultant shall monitor the contractor's compliance with its safety program and advise the City of observed deficiencies. The Construction Safety Orders, the Caltrans Safety Manual, and the contractor's safety plan will guide the Consultant's field safety monitoring program.

Construction Progress Meetings – The Consultant shall determine an appropriate schedule for conducting Project progress meetings. The meeting will provide a forum to discuss and resolve project issues early on and ensure it is maintained in a manageable state. Then meetings will include a discussion of the project status, the next items of work, and any coordination efforts that may be needed to keep the project moving forward. Additional special meetings may be required to address special issues and conditions.

- **Deliverables:**

- Track CCOs, extra work, supplemental work, project contingency balance
- Track shop drawing reviews and Requests for Information (RFI) from contractor with design consultants
- Prepare contractor progress payments per City format
- Labor Compliance
- Track materials incorporated into project
- Daily & Weekly Reports / Correspondence
- Maintain construction document files per LAPM
- Coordinate with City's Public Information Officer
- Coordinate with Caltrans District Local Assistance Engineer (DLAE)
- Log of all Submittals/RFIs
- Prepare daily inspection reports in accordance with Caltrans Construction Manual.
- Provide roadway and structural inspections for the Project.
- Provide construction engineering to assist with necessary field design

changes.

- Ensure all permit requirements are being followed
- Coordinate review and approval of Contractor's WPCP (when applicable).
- Monitor project BMPs are installed and being maintained and prepare and submit required stormwater reporting
- Provide required inspections before, during, after rain events
- Prepare required inspection reports
- Monitor project for safety on a daily basis per Cal/OSHA requirements
- Monitor surrounding area for safety concerns to public that may be a result of project work (traffic control, impact to adjacent streets)
- Verify grades from construction staking.
- Coordinate field and laboratory testing services.

Task 3.0: POST-CONSTRUCTION PHASE SERVICES

Final Inspection and Punch List – The Consultant shall, in conjunction with the City, inspect the near completed facilities to identify discrepancies and deficiencies in the work performed by the contractor, and will subsequently prepare the necessary punch list to identify such items. Upon correction and re-inspection of omissions and deficiencies, the Consultant shall report to City on the completion of the Project, schedule a final walk thru with City, and recommend acceptance and approval of final payment to the contractor. Consultant shall assist with the preparation and signing of the Acknowledgement of Construction Closeout and Release of Claims form.

As-Built Drawings – The Consultant shall regularly review the Project as-built drawings produced by the contractor and require that the as-built drawings reflect the current Project conditions. The Consultant shall provide the City and the Design Engineer with a copy of the contractor's as-built drawings and sufficient additional information to prepare certified final record as-built drawings.

Project Closeout – Upon completion of the work and after all items on the punch list have been addressed, the Consultant shall prepare and submit, in accordance with the City's direction, the final payment package to the contractor. The Consultant shall submit all final Project records and reports (including laboratory and plant testing reports), manufacturer's certificates and pictures and videos of various phases of construction.

Deliverables:

- Furnish As-Built information to the design consultant for preparation of As-Built drawings.
- Perform final walk-throughs with the City and Contractor.
- Submit required Federal HSIP grant paperwork to Caltrans DLAE
- Prepare final construction report for the Project.
- Prepare close out files in three ring binders and an electronic copy in pdf format and deliver to the City following the completion and acceptance of the Project.

EXHIBIT B
SCHEDULE OF FEES

EXHIBIT 10-H COST PROPOSAL- Hospital Road Bridge Low Water Crossing Replacement
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Consultant MNS ENGINEERS INC. Contract No. _____ Date 8/17/2020

DIRECT LABOR

Classification/Title	Name	hours	Actual Hourly Rate	Total
Project Manager/ Construction Manager	Bill Callaghan	72	\$78.05	\$5,619.60
Construction Inspector*	Craig Fraki	276	\$58.43	\$16,126.68
Construction Inspector*	John Stage	39	\$70.41	\$2,746.05
Construction Inspector*	Phil Lemmon	0	\$67.92	\$0.00
Office Engineer	Celeste Alfino	68	\$27.90	\$1,897.47
				\$0.00
				\$0.00
				\$0.00

LABOR COSTS

a) Subtotal Direct Labor Costs	\$26,389.80
b) Anticipated Salary Increases (see page 2 for sample)	\$0.00
c) TOTAL DIRECT LABOR COSTS [(a) + (b)]	\$26,389.80

FRINGE BENEFITS

d) Fringe Benefits (Rate: <u>59.23%</u>)	e) Total Fringe Benefits [(c) x (d)]
	\$15,630.68

INDIRECT COSTS

f) Overhead (Rate: <u>81.91%</u>)	g) Overhead [(c) x (f)]
h) General and Administrative (Rate: <u>0.00%</u>)	i) Gen & Admin [(c) x (h)]
j) Total Indirect Costs [(e) + (g) + (i)]	\$37,246.56

FEE (Profit)

q) (Rate: <u>10.00%</u>)	k) TOTAL FIXED PROFIT [(c) + (j)] x (q)]
	\$6,363.64

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs			\$0.00
m) Equipment Rental and Supplies			\$0.00
n) Permit Fees			\$0.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)	1		\$0.00
p) Total Other Direct Costs [(l) + (m) + (n) + (o)]			\$0.00
TOTAL COST [(c) + (j) + (k) + (p)]			\$70,000.00

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered “tools of the trade” are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #1) PAGE 2 OF 2
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
 (SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant MNS ENGINEERS INC.

Contract No. _____

Date 8/17/2020**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

44060

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$26,389.80	455	=	\$58.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$58.00	+	0%	=	\$58.00	Year 2 Avg Hourly Rate
Year 2	\$58.00	+	3%	=	\$59.74	Year 3 Avg Hourly Rate
Year 3	\$59.74	+	3%	=	\$61.53	Year 4 Avg Hourly Rate
Year 4	\$61.53	+	3%	=	\$63.38	Year 5 Avg Hourly Rate
Year 5	\$63.38	+	3%	=	\$65.28	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	455.0	=	455.0	Estimated Hours Year 1
Year 2	0.00%	*	455.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	455.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	455.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	455.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	455.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)\$26,389.80

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$58.00	*	455	=	\$26,389.80	Estimated Hours Year 1
Year 2	\$59.74	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$61.53	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$63.38	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$65.28	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$26,389.80	
Direct Labor Subtotal before Escalation				=	\$26,389.80	
Estimated total of Direct Labor Salary Increase				=	\$0.00	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT C DBE FORMS



EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Goleta 2. Contract DBE Goal: 0.0
 3. Project Description: Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston
 4. Project Location: Hollister Ave at Chapel St. and Calle Real at Kingston Ave
 5. Consultant's Name: MNS Engineers, Inc. 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
N/A	N/A	N/A	0%
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION 0 %	
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ _____ _____			
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.		<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> 12. Preparer's Signature Greg Chelini, PE 14. Preparer's Name Vice President 16. Preparer's Title </div> <div style="width: 35%;"> August 14, 2020 13. Date 805.896.9474 15. Phone </div> </div>	


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



Disclosure of Lobbying Activities

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District , if known	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District , if known	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number , if applicable _____	
8. Federal Action Number , if known:	9. Award Amount , if known:	
10. Name and Address of Lobby Entity (If individual, last name, first name, MI)	11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
12. Amount of Payment (check all that apply) \$ <u>Rectangular R</u> <input type="checkbox"/> actual <input type="checkbox"/> planned	14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12: (attach Continuation Sheet(s) if necessary)		
N/A. No Lobbying activities.		
16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: <u></u> Print Name: <u>Greg Chelini, PE</u> Title: <u>Vice President</u> Telephone No.: <u>805.896.9474</u> Date: <u>8/14/2020</u>		
Authorized for Local Reproduction Standard Form - LLL		

Federal Use Only:

Standard Form LLL Rev. 04-28-06

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date 8/14/2020 PE/CE

Federal-aid Project No(s) HSIPL 5481(019) Bid Opening Date 7/29/2020 CON

The City of Goleta established a Disadvantaged Business Enterprise (DBE) goal of 0.00% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
--------------	------------------------

N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
-------------------------	------------------------------	-----------------------------

N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.



- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
N/A. No additional technical support needed for scope of this project and met the 0% DBE required.				
	Pick			0.00%
	Pick			0.00%
	Pick			0.00%
	Pick			0.00%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.

Names, addresses and phone numbers of firms selected for the work above:

N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.



F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

N/A.

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
N/A. No additional technical support needed for scope of this project, and we have met the 0% DBE required.		

H. Any additional data to support a demonstration of good faith efforts:

N/A.



Attachment 2

Amendment No. 3 to a Professional Design Services Agreement Between
the City of Goleta and Kimley-Horn and Associates, Inc.

**AMENDMENT NO. 3
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

This **Amendment No. 3** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina Corporation ("Consultant") dated December 19, 2017, ("Agreement," Agreement No. 2017-130) is made on this 5th day of November, 2020.

RECITALS

WHEREAS, this Agreement is for the professional design engineering services in conjunction with the Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacon (PHB) at Kingston Project and contains a not-to-exceed amount of \$55,000; and

WHEREAS, on December 18, 2018, the Agreement was amended so as to extend the termination date of the Agreement to December 31, 2020, ("Amendment No. 1"); and

WHEREAS, on June 18, 2019, the Agreement was amended so as to provide for additional compensation in the amount of six thousand seven hundred fifty dollars (\$6,750) for professional design engineering services ("Amendment No. 2"); and

WHEREAS, the Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed sixty-one thousand seven hundred fifty dollars (\$61,750); and

WHEREAS, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of six thousand dollars (\$6,000) for continued tasks including responding to requests for information, submittals, and completing the record drawings; and

WHEREAS, the Agreement currently provides in Section 6 for the termination of the Agreement on December 31, 2020, and

WHEREAS, the parties desire to amend the Agreement so as to extend the termination of the Agreement to December 31, 2022; and

WHEREAS, the Agreement currently provides in Exhibit B-1 entitled Schedule of Fees the hourly rates; and

WHEREAS, the parties desire to amend Exhibit B-1 of the Agreement to identify the new hourly rates, attached as "Exhibit B-2"; and

WHEREAS, the Agreement did not provide for the Agreement or any amendments to be executed in counterparts by facsimile or electronic mail; and

WHEREAS, the parties desire to amend the Agreement to allow for execution of the Agreement and amendments by facsimile and electronic mail in order to expedite the finalization of the agreements; and

WHEREAS, the City Council approved this Amendment No. 3, on this 5th day of November, 2020.

AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$6,000 and to read in its entirety:

- (a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$67,750 (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 expense set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-2," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2020, 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.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional one year to read in its entirety.

The term of this Agreement is from the date first written above to December 31, 2022, unless the 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 the term of this Agreement following the notice to proceed.

3. This Agreement is amended to delete and replace in its entirety:

Exhibit B-1 Schedule of Fees with **Exhibit B-2 Schedule of Fees** attached hereto and incorporated herein.

4. **Section 47. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES** of the Agreement is added to include counterparts and electronic/facsimile signatures as follows:

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.

5. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 3 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Michelle Greene, City Manager


Darren Adrian, Vice President

ATTEST:

Deborah Lopez, City Clerk

Jason Melchor, Associate

APPROVED AS TO FORM:
MICHAEL JENKINS, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...

Winnie Cai, Assistant City Attorney

Local Assistance Procedures Manual

EXHIBIT B-2
SCHEDULE OF FEESEXHIBIT 10-H1
Cost Proposal

Exhibit 10-H1 Cost Proposal
Cost-Plus-Fixed Fee or Lump Sum or Firm Fixed Price Contracts
 (Design, Engineering and Environmental Studies)

Note: Mark-ups are Not Allowed

☒ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant
Consultant Kimley-Horn and Associates, Inc.Project No. _____ Contract No. _____ Date 9/24/2020**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Sr. Engineer I	TBD	22	\$71.73	\$ 1,578.06
Engineer I	TBD	14	\$51.21	\$ 716.94
Analyst/Project Support	TBD	8	\$40.76	\$ 326.08
Admin Support	TBD	3	\$32.56	\$ 97.68
			\$0.00	\$ -

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 2,718.76

b) Anticipated Salary Increases (see Anticipated Salary Increases page for calculation) \$ -

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** **\$ 2,718.76**

INDIRECT COSTS

d) Fringe Benefits (Rate: 0.00%) e) Total Fringe Benefits [(c) x (d)] \$ -

f) Overhead (Rate: 194.64%) g) Overhead [(c) x (f)] \$ 5,291.79

h) FCCM (Rate: 0.61%) i) FCCM [(c) x (h)] \$ 16.58

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** **\$ 5,308.38**

FIXED FEE k) **TOTAL FIXED FEE [(c) + (e) + (i) * fixed fee 10%]** **801.06**

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	66.3		\$0.575	\$ 38.14
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -

l) **TOTAL OTHER DIRECT COSTS** **\$ 38.14****m) SUBCONSULTANTS' COSTS**

Subconsultant 1: \$

Subconsultant 2: \$

Subconsultant 3: \$

Subconsultant 4: \$

(m) **TOTAL SUBCONSULTANTS' COSTS** **\$ -**(n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)]** **\$ 38.14****TOTAL COST [(c) + (j) + (k) + (n)]** **\$ 8,866.33**

Local Assistance Procedures Manual**EXHIBIT 10-H1
Cost Proposal****Exhibit 10-H1 Cost Proposal****Actual Cost-Plus-Fixed Fee or Lump Sum or Firm Fixed Price Contracts**
(Calculations for Anticipated Salary Increases)**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$ 2,718.76	/ 47	= \$57.85	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all periods (Increase the Average hourly rate for a period by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$57.85	+	5%	=	\$60.74	Year 2 Avg Hourly Rate
Year 2	\$60.74	+	5%	=	\$63.78	Year 3 Avg Hourly Rate
Year 3	\$63.78	+	5%	=	\$66.96	Year 4 Avg Hourly Rate
Year 4	\$66.96	+	5%	=	\$70.31	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each period by total hou

	Estimated % Completed Each Period		Total Hours per Cost Proposal		Total Hours per Period	
Year 1	100.00%	*	47	=	47	Estimated Hours Year 1
Year 2	0.00%	*	47	=	0	Estimated Hours Year 2
Year 3	0.00%	*	47	=	0	Estimated Hours Year 3
Year 4	0.00%	*	47	=	0	Estimated Hours Year 4
Year 5	0.00%	*	47	=	0	Estimated Hours Year 5
Total	100%		Total	=	47	

4. Calculate Total Costs including Escalation (Multiply average hourly rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated Hours (calculated above)		Cost Per Period	
Year 1	\$57.85	*	47	=	\$2,718.76	Estimated Hours Year 1
Year 2	\$60.74	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$63.78	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$66.96	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$70.31	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$2,718.76	
Direct Labor Subtotal before escalation				=	\$2,718.76	
Estimated total of Direct Labor Salary Increase				=	\$0.00	Transfer to Page 1

Period 1 = Contract inception through 6/30/21 Period 2 = 7/1/21 through 6/30/22

Period 3 = 7/1/22 through 6/30/23 Period 4 = 7/1/23 through 6/30/24 Period 5 = 7/1/24 through 6/30/25

Local Assistance Procedures Manual**EXHIBIT 10-H1
Cost Proposal****Exhibit 10-H1 Cost Proposal****Certification of Direct Costs:**

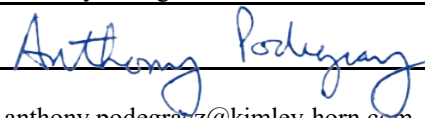
I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost

Prime Consultant or Subconsultant Certifying:

Name:	<u>Anthony Podegracz</u>	Title*:	<u>Vice President</u>
Signature:		Date of Certification (mm/dd/yyyy):	<u>9/24/2020</u>
Email:	<u>anthony.podegracz@kimley-horn.com</u>	Phone Number:	<u>714-939-1030</u>
Address:	<u>765 The City Drive, Suite 200, Orange, CA 92868</u>		

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Engineering Services

Attachment 3
(available online only)

Agreement No 2017-130 and Amendment Nos. 1 and 2 for Professional
Design Services Between the City of Goleta and Kimley-Horn and
Associates, Inc.

2017-130

Project Name: Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston and RRFB at Chapel Project

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 19th day of December, 2017 by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina Corporation (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional design services for the Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston and RRFB at Chapel 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, the CITY noticed a competitive request for proposals and/or qualifications for professional designs services from the City's pre-authorized qualified consultants list for professional traffic engineering services ("short list"); and

WHEREAS, the CONSULTANT was selected based on an evaluation process; and

WHEREAS, the City Council, on this 19th day of December, 2017, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

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 design services in conjunction with the RRFB at Chapel and

PHB at Kingston and RRFB at Chapel Project. Services shall generally include design, surveying, project management and underground utility location services, 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 \$55,000 (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 December 31, 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.

(c) The method of payment for this contract will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY's approved overhead rate set forth in the Cost Proposal. In the event, that CITY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by CITY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "a" shall not be exceeded, unless authorized by contract amendment.

(d) Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

(e) When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

(f) Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, CITY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

(g) No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

(h) CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by CITY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due CITY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Goleta
Accounts Payable
ap@cityofgoleta.org
130 Cremona Dr., Ste B
Goleta, CA 93117

(i) Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by CITY's Contract Administrator.

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

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 in

advance. 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, P.E. 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. PERFORMANCE PERIOD

This contract shall go into effect on December 5, 2017, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The contract shall end on December 31, 2018, unless extended by contract amendment.

CONSULTANT is advised that any recommendation for contract award is not binding on CITY until the contract is fully executed and approved by CITY.

7. PERSONAL SERVICES/NO ASSIGNMENT

This AGREEMENT is for professional services which are personal to CITY. Adam Chase, PE, TE, 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 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.

8. HOLD HARMLESS AND INDEMNITY

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or

occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. 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 and will survive termination of this AGREEMENT.

(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. TERMINATION BY CITY

CITY reserves the right to terminate this contract upon ten (10) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

CITY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, CITY may proceed with the work in any manner deemed proper by CITY. If CITY terminates this contract with CONSULTANT, CITY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to CITY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

The maximum amount for which the CITY shall be liable if this contract is terminated is \$2,000 dollars.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. USE OF THE TERM "CITY"

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

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. NOTICES

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 CITY:	Attention: Michelle Greene, City Manager
	City of Goleta
	130 Cremona Drive, Suite B
	Goleta, CA 93117

TO CONSULTANT:

Attention: Adam Chase, PE, TE
Kimley-Horn and Associates, Inc.
21820 Burbank Blvd., Suite 230
Woodland Hills, CA 91367

28. COST PRINCIPLES

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.

The CONSULTANT 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 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.

29. 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., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and CITY shall maintain and make available for inspection 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 three years from the date of final payment under the contract. The state, State Auditor, CITY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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 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.

31. SUBCONTRACTING

Nothing contained in this contract or otherwise, shall create any contractual relation between CITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to CITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from CITY'S obligation to make payments to the CONSULTANT.

CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by CITY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal, which include MNS, Engineers, for Surveying, Shane Sobecki and C-Below, Inc. for Potholing, Nick Loera. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by CITY.

All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

Any substitution of subconsultant(s) must be approved in writing by CITY's Contract Administrator prior to the start of work by the subconsultant(s).

32. 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.

33. 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>.

34. 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.

CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with 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.

35. 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.

36. NON DISCRIMINATION STATEMENT OF COMPLIANCE

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this CONTRACT, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full. CONSULTANT

and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other AGREEMENT.

The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The CONSULTANT, with regard to the work performed by it during the AGREEMENT shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the AGREEMENT covers a program whose goal is employment.

37. 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 CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", 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 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.

38. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

The goal for DBE participation for this contract is 0.0%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract (Exhibit C). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CITY deems appropriate.

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

A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra

participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within 30 days.

39. CONTINGENT FEE

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 CONSULTANT for the purpose of securing business. For breach or violation of this warranty, 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.

40. 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 CITY's Project Manager and Public Works Director, who may consider written or verbal information submitted by CONSULTANT.

Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by CITY Governing Board 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 CONSULTANT from full and timely performance in accordance with the terms of this contract.

41. INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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.

42. SAFETY

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

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

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

43. 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 CITY; and no further agreement will be necessary to transfer

ownership to CITY. CONSULTANT shall furnish 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.

CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by CITY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by 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 may be authorized in writing by 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).

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.

44. CONFIDENTIALITY OF DATA

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

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

CONSULTANT shall not comment publicly to the press or any other media regarding the contract or CITY's actions on the same, except to 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.

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 CITY, and receipt of 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.

45. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, 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 CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

46. EVALUATION OF CONSULTANT

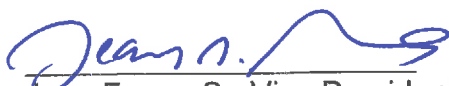
CONSULTANT's performance will be evaluated by CITY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on December 19, 2017.

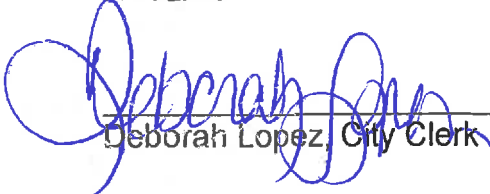
CITY OF GOLETA



Michelle Greene, City Manager

CONSULTANT


Jean Fares, Sr. Vice President
(CA PE No. TR2097)

ATTEST


Deborah Lopez, City Clerk


Sri Chakravarthy, Associate
PE 73629

APPROVED AS TO FORM


Winnie Cai, Deputy City Attorney

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EXHIBIT A SCOPE OF WORK

The following tasks shall be performed to provide a Project, Specifications & Estimates (PS&E) package for construction.

Task 1: PROJECT MANAGEMENT

Task 1.1: Kick-off Meeting

Consultant shall schedule and lead a project kick-off meeting within two weeks of Notice to Proceed (NTP) to discuss project details. Included in this discussion shall be subcontractor, who shall help in the review of:

- Develop a Project Development Team (PDT) outlining individual roles and responsibilities
- Project's expectations and goals
- Specific design issues and constraints based on preliminary layout
- Project schedule indicating milestones, major activities, and deliverables for City review

Task 1.2: Monthly Progress Meetings/Conference Calls

Consultant shall coordinate and attend PDT meetings with City staff and stakeholder representatives at and in-between periodic project milestones up to four PDT meetings and four conference calls. Meeting agendas for the planned meeting and meeting minutes from the previous meetings shall be prepared by Consultant at each meeting and distributed to the City Project Manager and other attendees.

Task 1.3: Project Administration

Consultant shall prepare and distribute project correspondence, billings, and submittals.

- **Schedule** – Consultant shall prepare a project schedule using Microsoft Project within the first two weeks following an NTP. Consultant shall prepare monthly project reports addressing the progress of work including information or decisions required to maintain schedule and complete deliverables, problems encountered that may affect schedule, budget or work products and anticipated work, action items, and shall review activities for the following month.
- **Budget** – Consultant shall track and report project expenditures for each major task element on a monthly basis.
- **Quality Control/Quality Assurance (QC/QA)** – Consultant shall follow standard QC/QA Manual for improvement projects.

Deliverables: PDT meeting agendas, meeting minutes, and action item lists, baseline progress schedule, monthly progress reports, progress schedule updates, and invoicing.

TASK 2: PRELIMINARY DESIGN

Task 2.1: Topographic Survey

Subconsultant shall provide a cross-section survey documenting the lip of gutter, flowline, top of curb, existing or future back of walk, property line, and 10 feet beyond along the project alignment and extending 20 feet beyond the curb returns at the location of the major street crosswalk for all intersections. In addition, the survey shall locate visible structures such as curbs, gutters, striping, signs, manholes, valve covers, trees, fire hydrants, walls, street lights, guy wires, etc. within the limits of the survey.

Deliverables: Survey Mapping Data, AutoCAD drawing with existing utility data.

Task 2.2: Field Investigation and Data Collection

Consultant, with the assistance of the City, shall obtain and review readily available information and reports pertaining to the Project including utilization of horizontal alignment developed as part of prior engineering and studies including utility information, aerial maps, survey and right-of-way data, geotechnical reports, traffic analysis, environmental and biological studies for the Project. Research of City, County, and other agency records shall be conducted for existing horizontal and cadastral survey control. Found notes, maps, and data shall be copied, correlated, and indexed in a survey database.

Task 2.3: Utility Coordination

Consultant shall collect readily available utility information and review the topographic base map to identify existing utilities. A utility base map shall be prepared and sent to utility owners for review and comment. Part of the identification process is to obtain additional utility information from the owners such as as-built record drawings and atlas sheets, as well as determining the facility's function. Finally, the utility base map is revised using the utility owner provided items and information our team has developed over the course of the task.

In addition, Consultant shall attend up to one meeting with SCE for design coordination.

Task 2.4: Right-of-way Coordination

Consultant shall include right-of-way retracement and temporary construction easement exhibits at the both Hollister Avenue at Chapel Street and Calle Real at Kingston Street intersections to support the City's right-of-way documentation.

Deliverables: Utility Base Map, Matrix, First Letter (Identification), Meeting minutes on SCE meeting.

Task 2.5: Preliminary Design of Plans, Specifications, and Estimates (PS&E) for Construction

Title Sheet/General Notes

Consultant shall prepare a title sheet with a vicinity map, location map, utility company contacts, legend and general notes for the project. Because the project shall be treated as two Phases, separate title sheets shall be prepared for each Phase.

Curb Ramp Improvement Plans

Consultant shall prepare curb ramp/curb extension/median island refuge improvement plan sheets. The improvements shall include proposed street improvements consisting of asphalt pavement, concrete sidewalk, ADA ramps, curb and gutter, and asphalt replacement, as needed. Pavement structural calculations shall be assumed on the provided traffic index and worse case soil parameters R-value. Fine grading, spot grade elevations, grade breaks shall be shown on these plans.

Signage and Striping Plans

Consultant shall prepare plans (1" = 20' or 1" = 40') for each location. Consultant shall prepare the signage and striping plans per the latest edition of the California Manual of Traffic Control Devices (CA-MUTCD). These plans shall implement various traffic control devices e.g. pavement stripes, markings, retroreflective markers, object markers, traffic signs. The plans shall incorporate features to support all users, such as bike and pedestrian accommodations.

RRFB/PHB/Street Lighting (Electrical) Plans

Consultant shall prepare plans at 1"=20' for the installation of street lighting, RRFBs and PHB (one plan per location). The plans shall include a pole schedule, general location within parkway or sidewalk, applicable details for pole foundations, assemblies, and equipment.

Bioretention Improvement Plans

Consultant shall prepare the Bioretention Improvement plans within the project limits. We can prepare the bioretention design with several locations combined on each sheet based on proximity to each other. The plans shall show runoff direction, runoff collection and diversion treatments, runoff receiving areas, permeable treatments, urban tree soil water reservoirs, bio-retention treatments and overflow control treatments. Consultant shall require the services of a geotechnical expert to provide recommendations for the treatment details.

Bioretention Details

Consultant shall prepare bioretention treatment details for the project including sub-drainage piping based on the geotechnical recommendations. Typical cross sections shall be prepared to identify depth of soil, gravel underdrain system and any inlet or overflow system for the improvements.

Engineers Opinion of Probable Construction Costs

Consultant shall compile and prepare the Opinion of Probable Construction Costs (OPCC). Contingencies shall be included at the appropriate percentage.

Technical Specifications

Consultant shall prepare the project special provisions as it shall be assumed that the City will provide the "Front-End" documents.

Utility Facility Positive Location

Consultant's team shall prepare and execute a potholing plan (up to 6 potholes) to provide positive identification and location of utility facilities that may conflict with the pole

foundation improvements. Consultant shall have programmed up to 6 standard potholes including perma patch repair (5' to 10' deep). If required, Consultant shall prepare the traffic control and the City shall pay the permitting fees.

Right-of-way Coordination

Consultant shall coordinate right-of-way mapping and support services to facilitate right-of-way adjustments, temporary construction easements or license agreements.

Deliverables: Preliminary Design of plans, specifications, and estimate. Subsurface investigation for up to 6 pothole locations. Right-of-way plats and figures.

TASK 3: FINAL DESIGN

Consultant shall prepare a bid schedule from the Engineer's Estimate to be included in the bid documents. Consultant's final opinion of probable construction cost estimate shall be based upon, and in agreement with, the final items of work with estimated quantities.

The design deliverables shall include: Providing final improvement Plans on Mylar ready for advertising and bidding, along with "camera-ready" Specifications (including appendixes), and a complete Engineer's Estimate, all wet seal stamped and signed by a licensed California Civil Engineer and Traffic Engineer. Final plans shall be submitted on Mylar sheets 24" x 36" in size. The final plans and specifications shall be delivered to the City of Goleta.

TASK 4: BID/CONSTRUCTION ADMINISTRATION

Task 4.1: Bid Advertising Support

Consultant shall assist the City in the advertising, bidding, and selection process. Consultant has provided an estimated budget of twenty (20) hours for the tasks described below:

- Copies of Drawings and Contracts Documents

- Pre-bid Meeting

- Questions and Addenda During Advertising

Task 4.2: Construction Management

Consultant shall provide an estimated budget of twenty (20) hours for the tasks described below:

- Meetings

- Questions During Construction and Requests for Information (RFIs)

- Contractor Submittals

- Plan Revisions

- Record Drawings

- Owner of Project Documents

EXHIBIT B SCHEDULE OF FEES

Exhibit 10-H Cost Proposal Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) contracts (Design Engineering and Environmental Studies)

Note: Make-up is Not Allowed

Consultant Kimley-Horn and Associates, Inc. Contract No. _____ Date 9/21/2017

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Sr. Engineer II	Jean Fares	1	\$82.22	\$ 82.22
Sr. Engineer I	Adam Chase, Sri Chakravarthy	48	\$61.06	\$ 2,930.88
Engineer II				\$ -
Engineer I	Charlie Campuzano, Nicole Dias	38	\$45.20	\$ 1,717.60
Analyst II	Panayiota Georgalis, etc.	157	\$34.86	\$ 5,473.02
Admin. Support	Mitchell Wong, etc.	6	\$25.74	\$ 154.44

LABOR COSTS

a) Subtotal Direct Labor Costs

\$ 10,358.16

b) Anticipated Salary Increases

\$ - (see Escalation Calculation)

c) Total Direct Labor Costs [(a) + (b)] \$ 10,358.16

FRINGE BENEFITS

d) Fringe Benefits Rate: 42.14%

e) Total Fringe Benefits [(c) x (d)] \$ 4,364.93

INDIRECT COSTS

f) FCCM Rate: 0.51%

g) FCCM [(c) x (f)] \$52.83

h) General and Administrative Rate: 15.488%

i) Gen & Admin [(c) x (h)] \$16,042.72

j) Total Indirect Costs [(g) + (i)] \$ 16,095.54

FEE (Profit)

q) Rate: 10.00%

k) TOTAL FIXED PROFIT [(c) + (e) + (j) x (q)] \$ 3,076.58

OTHER DIRECT COSTS (ODC)

l) Travel Mileage Costs (supported by consultant actual costs)

\$ 348.75

m) Equipment Rental and Supplies (itemize)

\$ -

n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc

\$ 7,350.00

o) Subconsultant Costs (attach detailed cost proposal in same

format as prime consultant estimate for each subconsultant)

\$ 11,765.31

p) Total Other Direct Costs [(l) + (m) + (n) + (o)] \$ 19,464.06

TOTAL COST [(c) + (e) + (j) + (k) + (p)] \$ 53,359.27

OTHER DIRECT COSTS (ODC) ITEMIZATION

Travel/Mileage Costs

Cost

Mileage

\$ 240.75

Potholing \$ 6,500.00

Per Diem

\$ 108.00

Total

\$ 348.75

Permit Fees, Plan Sheets, Test Holes, Etc.

Plotting

\$ 850.00

Total

\$ 850.00

NOTES

- Employees subject to prevailing wage requirements to be marked with an *
- ODC items should be based on actual costs and supported by historical data and other documentation
- ODC items that would be considered "tools of the trade" are not reimbursable
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead
- Travel related costs should be pre-approved by the contracting agency. The rates should not exceed the State Department of Personnel Administration (DPA) requirements

Exhibit C **Disadvantaged Business Enterprise forms 10-O1 and 10-O2**

Local Assistance Procedures Manual

Exhibit 10-O1
Consultant Proposal DBE Commitment

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: City of Goleta 2. Contract DBE Goal: 0%
 3. Project Description: Rectangular Rapid Flashing Beacons at Chapel and Pedestrian Hybrid Beacons at Kingston and RREBS at School Zone Projects
 4. Project Location: City of Goleta, CA
 5. Consultant's Name: Kimley-Horn and Associates, Inc. 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Material's Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
None			
Local Agency to Complete this Section			
17. Local Agency Contract Number		11. TOTAL CLAIMED DBE PARTICIPATION	0 %
18. Federal-Aid Project Number			
19. Proposed Contract Execution Date			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
20. Local Agency Representative's Signature	21. Date	12. Preparer's Signature	13. Date
22. Local Agency Representative's Name	23. Phone	Jean B. Fares	747-930-8100
24. Local Agency Representative's Title		14. Preparer's Name	15. Phone
		Sr. Vice President	
		16. Preparer's Title	

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

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For a format request call (916) 654-6410 or TDD (916) 654-3850 or write Records and Forms Management, 1120 N Street, MS 89, Sacramento, CA 95814.

Page 1 of 2
 July 23, 2015

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: City of Goleta 2. Contract DBE Goal: 0%
 3. Project Description: Rectangular Rapid Flashing Beacons at Cleveland Peck street Hybrid Beacon at Kingston and RRBs at School Zone Projects
 4. Project Location: City of Goleta, CA
 5. Consultant's Name: Kimley-Horn and Associates, Inc. 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: \$53,359.24
 8. Total Dollar Amount for ALL Subconsultants: \$18,265.31 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
<u>Road</u>			
Local Agency to Complete this Section			
20. Local Agency Contract Number			\$ 0
21. Federal Aid Project Number			
22. Contract Execution Date			0 %
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			
14. TOTAL CLAIMED DBE PARTICIPATION			
IMPORTANT: Identify all DBE firms being claimed for credit regardless of tier. Written confirmation of each listed DBE is required.			
15. Preparer's Signature			11/18/17
16. Date			
17. Preparer's Name			747-930-8403
18. Phone			
19. Preparer'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.

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**AMENDMENT NO. 1
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

This **Amendment No. 1** to a PROFESSIONAL DESIGN SERVICES AGREEMENT and between the **City of Goleta**, a municipal corporation ("City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina Corporation ("Consultant") dated December 19, 2017 ("Agreement," Agreement No. 2017-130) is made this 18th day of December, 2018.

RECITALS

WHEREAS, this Agreement is for professional design services for the Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacons (PHB) at Kingston and RRFB at Chapel Project; and

WHEREAS, the Agreement between City and Consultant currently provides in Section 3 that 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 shall be binding upon Consultant until December 31, 2019; and

WHEREAS, the parties desire to extend the date of binding rates in Section 3 to December 31, 2020; and

WHEREAS, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on December 31, 2018; and

WHEREAS, the parties desire to amend the Agreement so as to extend the termination of the Agreement to December 31, 2020; and

WHEREAS, the City Council approved this Amendment No. 1, on this 18th day of December, 2018.

AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add extend the termination date to December 31, 2020 and to read in its entirety:

(a) Maximum and Rate. The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$55,000 (herein "not to exceed amount"), and shall be earned as the work progresses.

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 December 31, 2020, 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.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional two years to read in its entirety.


The term of this Agreement is from the date first written above to December 31, 2020, unless the 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 the term of this Agreement following the notice to proceed.

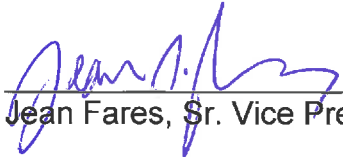
3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.

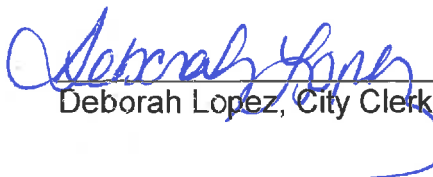
CITY OF GOLETA



Michelle Greene, City Manager

CONSULTANT

 , PE TR2097
Jean Fares, Sr. Vice President

ATTEST:


Deborah Lopez, City Clerk

 , PE CA 63123
Sri Chakravarthy, Associate
ANSSA PHANEUF

APPROVED AS TO FORM


Winnie Cai, Assistant City Attorney

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**AMENDMENT NO. 2
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

This **Amendment No. 2** to a PROFESSIONAL DESIGN SERVICES AGREEMENT is made this 18th day of June, 2019, between the **CITY OF GOLETA**, a municipal corporation ("City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina Corporation ("Consultant") dated December 19, 2017 ("Agreement," Agreement No. 2017-130).

RECITALS

WHEREAS, this Agreement is for the professional engineering services in conjunction with the Rectangular Rapid Flashing Beacons (RRFB) at Chapel and Pedestrian Hybrid Beacon (PHB) at Kingston Project and contains a not-to-exceed amount of \$55,000; and

WHEREAS, on December 18, 2019, the Agreement was amended so as to extend the termination date of the Agreement to December 31, 2020 ("Amendment No. 1"); and

WHEREAS, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed fifty-five thousand (\$55,000); and

WHEREAS, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of six thousand seven hundred fifty dollars (\$6,750) for professional engineering services; and

WHEREAS, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) that 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 shall be binding upon Consultant until December 31, 2019; and

WHEREAS, the parties desire to amend the Agreement so as to provide an updated Section 3 Subsection (a) that hourly rates and with reimbursement to Consultant for those expenses set forth in Consultant's Schedule of Fees marked Exhibit B-1, attached and incorporated herein and shall be binding upon Consultant until December 31, 2019; and

WHEREAS, the City Council approved this Amendment No. 2, on this 18th day of June, 2019.

AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$6,750 and to read in its entirety:


(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$61,750 (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-1," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2020, 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.

2. **Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.**

In concurrence and witness whereof, this Amendment No. 2 has been executed by the parties effective on the date and year first above written.

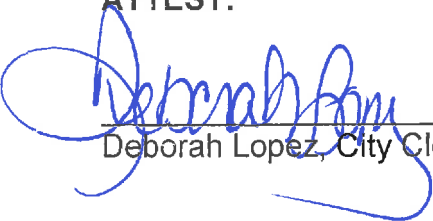
CITY OF GOLETA


Michelle Greene, City Manager

CONSULTANT

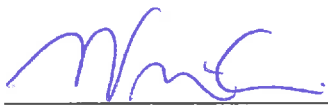
Jean Fares, Sr. Vice President

ATTEST:


Deborah Lopez, City Clerk

Sri Chakravarthy, Associate

APPROVED AS TO FORM

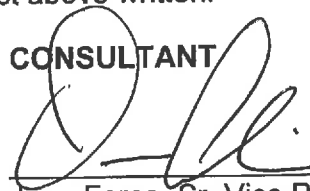

Winnie Cai, Assistant City Attorney

In concurrence and witness whereof, this Amendment No. 2 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

Michelle Greene, City Manager


CONSULTANT



~~Jean Fares, Sr. Vice President~~
Darren Adrian, Vice President

ATTEST:

Deborah Lopez, City Clerk



~~Sri Chakravarthy, Associate~~
Jason Melcher, Associate

APPROVED AS TO FORM



Winnie Cai, Assistant City Attorney