

OAKLEY



CALIFORNIA

Agenda Date: 12/13/2016
Agenda Item: 3.9

STAFF REPORT

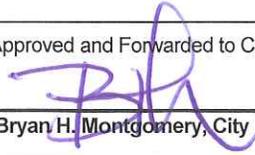
Date: Tuesday, December 13, 2016

To: Bryan H. Montgomery, City Manager

From: Kevin Rohani, P.E. Public Works Director/City Engineer

Subject: Agreement with WRA, Inc. for Biological and Permitting Services Associated with CIP 177 Bethel Island Road Culvert Rehabilitation Project

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Background and Analysis

The storm drain system in most rural parts of the City of Oakley is primarily made up of corrugated metal pipes that were placed under the roads decades ago to help with the flow of storm water from one side of the road to the other side, and onto larger drainage channels or sloughs. The culverts that were placed under the roads did not have any protective coatings, as is required with today's standards. As a result, these metal culverts would rust and deteriorate over the years, to the point of full collapse of the culvert.

The 48" corrugated metal culvert under Bethel Island Road has partially collapsed as a result of decades of rusting. The roadway above this culvert has developed sink holes as a result of culvert failure, and requires regular patching and repairs.

On September 27, 2016 the City Council approved an agreement with SAK Construction for the rehabilitation of the 48" deteriorated metal culvert under Bethel Island Road. Before construction can start, regulatory permits must be obtained from the California Department of Fish and Wildlife, the Regional Water Quality Control Board and the US Army Corps of Engineers.

Staff researched consultants who specialize in environmental permit processing for municipalities and the firm of WRA, Inc. was recommended as best suited for this project to prepare and process permit applications and reports. WRA, Inc. is very familiar with regulatory agencies and their procedures which is valuable in this project.

Staff discussed details of this project with WRA, Inc. and received a proposal in the amount of \$29,955 to complete the tasks needed to obtain the regulatory agency permits. Since these are very specialized and technical services, under Section 3.6.010 of the Oakley Municipal Code, formal and competitive bidding is not required.

Fiscal Impact

Approval of the resolution will authorize the City Manager to execute an agreement with WRA, Inc. for a cost not to exceed \$29,955. The 2016/17 Fiscal Year Capital Improvement Program budgeted funds for this project from Storm Drain Fund.

Staff Recommendation

Staff recommends that the City Council adopt the resolution approving the proposal with WRA, Inc. for Biological and Permitting services associated with Project Number 177 – Bethel Island Road Culvert Rehabilitation Project and authorizing the City Manager to enter into the agreement.

Attachments

1. WRA, Inc. Proposal
2. Resolution
3. Agreement



CITY OF OAKLEY BETHEL ISLAND ROAD CULVERT LINING PROJECT

BIOLOGICAL AND PERMITTING TASKS

Prepared for:

Keith Coggins
Senior Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

WRA Project Number 26308

October 28, 2016

PURPOSE

The purpose of this Scope of Work is to assist the City of Oakley with biological services related to resource agency permit applications and preparation of permit applications for the Bethel Island Road Culvert Lining Project (Project), in Oakley, Contra Costa County, California. WRA's general understanding of the Project is to repair the culvert by lining it. Temporary cofferdams will be installed on either side of the culvert and the drainageway will be dewatered to allow access the culvert. Once complete, the cofferdams will be removed.

SCOPE OF WORK

Task 1: Biological Resources Assessment and Letter Report

The Biological Resources Assessment (BRA) will identify potential sensitive habitat areas, including wetlands and aquatic habitats, as well as sensitive plant and animal species that are included on lists prepared by the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), and other applicable agencies. The BRA will also identify general measures that may be taken in order to avoid, reduce, and mitigate for any potential impacts that may occur to biological resources as a result of project development.

WRA will also conduct a site visit for the BRA which will also delineate applicable resource agency jurisdiction within the project area. WRA will identify jurisdictional limits of waters and associated

wetlands regulated by the U.S. Army Corps of Engineers (Corps) under the Clean Water Act (CWA) based on field indicators and using existing tidal datum information applied to existing topographic mapping of the site. The jurisdictional limits delineated under this task will be considered preliminary until review and verification by the applicable agencies.

Task 2. Permit Application Preparations

Based on the location of the project and known project description to date, multiple agency permits will be required for the project to proceed. WRA will work with the City of Oakley and their agents to prepare permit applications and for the project for the following resource agencies:

- California Department of Fish and Wildlife (CDFW)
- Regional Water Quality Control Board (RWQCB)
- US Army Corps of Engineers (Corps)

This task includes the preparation of a Project Description with the necessary information on potential project construction and operational impacts suitable for use in permit applications. WRA will provide analysis and documentation to facilitate Corps consultation with the USFWS, if necessary.

Task 2a. CDFW Streambed Alteration Agreement

WRA anticipates that the Project will require an agreement with the CDFW known as a Lake or Streambed Alteration Agreement. Based on the project description as provided by the Client, the repair of the Bethel Island Road culvert will require installation of cofferdams within the drainage that will occur within CDFW's jurisdiction. The Section 1602 program requires that any alteration of the channel or the banks of the channel (including riparian vegetation) be reviewed by CDFW and a Lake or Streambed Alteration Agreement issued.

WRA will prepare a Section 1602 Lake and Streambed Alteration Agreement application based on the findings of Task 1: Biological Resources Assessment and Report and the Project Plans. The application will contain information on the proposed activities, the anticipated impacts to sensitive habitats and species, and any potential water quality impacts associated with the proposed Project or its construction. The application will also include a description of any necessary mitigation measures. Figures will also be included that show site location and proposed project impacts and mitigation. Permit application fees will be provided by the Client. WRA will act as the agent for the Client to CDFW. WRA will work with the project team to assure that all information is made available for the application.

As a result of the application and permitting process, CDFW, may require additional surveys and mitigation measures to be implemented. CDFW may additionally require surveys for potential special-status species and/or mitigation prior to construction and those requirements will be detailed in the agreement. These services will be scoped separately, if required.

Task 2b. Corps Section 404 Permit

The Corps regulates the placement of fill within jurisdictional waters and wetlands. Based on a preliminary review and site visit of the Project Area and review of the current project design, a Corps

Section 404 permit will be necessary. WRA anticipates that the project would qualify under the Nationwide Permit (NWP) program. The permit application will address potential impacts to Corps' jurisdiction and the necessary permit requirements, including:

- Basic notification requirements as to site location; project description; and type and amount of fill in potentially jurisdictional areas;
- Appropriate plan figures that show proposed impacts to jurisdictional areas;
- Calculated areas and volume of proposed fill within jurisdictional areas;
- Determination of the project impacts on any endangered species or critical habitat;
- Compensatory mitigation (on-site or off-site);
- Wetland delineation with request for verification by the Corps;
- Brief statement concerning alternatives that avoid or minimize impacts to waters and wetlands.

WRA will calculate the impacts to areas within the Corps' jurisdiction and prepare associated figures that show these areas. WRA will need electronic georeferenced CAD data provided by the project engineer for this task. WRA will fill out the appropriate paperwork for the Corps' application, and will act as the agent during the Corps permitting process if desired. WRA will attend one site visit or meeting with the Corps and follow-up with up to four hours of time to assure a timely response to the application.

Task 2c. Regional Water Quality Control Board 401 Certification

Project authorization will be necessary from the RWQCB under a federal Clean Water Act Section 401 Water Quality Certification. The RWQCB will typically review a project's stormwater features during its processing of a 401 Certification. In addition, for any wetlands or jurisdictional areas found not to fall under the Corps 404 program, the RWQCB will likely claim these areas as "waters of the State" and require authorization under the state Porter-Cologne Act. WRA will calculate these impacts and show the impacted areas on figures.

Similar to the process with the Corps, WRA will act as the agent for the client to the RWQCB. WRA will work with the project team and regulators to ensure that all information is made available for the application. WRA will attend one site visit or meeting with the RWQCB and follow-up to assure a timely response to the application.

Task 3: Project Management, Resource Agency Coordination, and Meetings

This task covers communication with the City of Oakley and regulatory agencies regarding progress on each work product, preliminary findings, and information exchange necessary to facilitate the permits. The project manager will be responsible for maintaining project budget, scheduling for the project, and will be available by phone or email to answer technical questions and assist with ongoing project issues. The project manager or principal-in-charge will be available to attend up to two meetings with the client and project team as needed in addition to the meeting described in previous tasks. A total of 40 hours is allotted to this task based on WRA's experience with the time necessary to facilitate with regulatory agencies for similar projects.

Task 4. U.S. Fish and Wildlife Informal Consultation for Giant Garter Snake (Contingent)

The project may have adverse effects on federal-listed wildlife species, specifically, giant garter snake (*Thamnophis gigas*). Informal consultation with USWFS may be required. The informal consultation process requires the applicant to provide a description of the project (specifically any actions which may have an effect on federally-listed species), a description of the specific areas which may be affected, the manner in which impacts may occur, an analysis of cumulative impacts, and a description of the listed species or critical habitats that may be affected.

If required, WRA will utilize the previously developed Project Description and BRA (Task 1) to assist in preparation of an informal consultation. This consultation will describe the suitability of habitat conditions for the Federal-listed species and EFH known from the vicinity. In addition, the report will discuss any potential impacts (including direct, indirect and cumulative impacts) which may occur to these species and habitats as a result of the project, and any mitigation measures recommended to compensate for potential impacts. If the USFWS determines that a Biological Assessment under Section 7 of the Endangered Species Act is required, additional scope may be required.

Task 5. California Environmental Quality Act Review and Documentation

The City, as Lead Agency, may also require that a California Environmental Quality Act review is completed which would require either a Categorical Exemption or more likely an Initial Study and Mitigated Negative Declaration. WRA is able to assist in the preparation of either of these documents if necessary. A separate scope of work and cost estimate can be developed upon request.

SCHEDULE

WRA can schedule the site visit for the BRA within three weeks of the authorization to proceed. The written BRA reports will follow within four weeks of the site visit. The timing of the permit applications will be dependent on receiving the appropriate project design materials from the project engineer.

ASSUMPTIONS

- This scope assumes work through the permitting processes. The regulatory agencies may require specific pre-construction biological tasks or surveys that are currently unknown and cannot be scoped.
- This scope assumes that construction-level design drawings will be provided by the client, and that the designs will show anticipated locations of coffer dams.
- WRA will be provided with electronic copies of any existing biological reports and/or wetland delineations and/or project plans previously completed for this site.
- Any previous correspondence with federal, state, or local regulatory or resource agencies that relate to biological issues on this site will be provided
- Permit application fees that will be required for this project are not included in this cost proposal.
- Access to the property will be granted to WRA.

LIMITATIONS

WRA's liability for damages shall be limited to its work product and it shall not be responsible for changes, alterations, or monetary damages to Client's activity or project due to decisions rendered by federal, state or local agencies, or by any subsequent court action. The opinions are based on best professional judgment of a qualified biologist at the time of the study and with the information available as provided in publicly available databases and from the client.

WRA will work with the regulatory agencies as much as possible to facilitate timely processing of the permit applications by the regulatory agencies and to coordinate with them on permit conditions that may affect project feasibility, cost, and construction schedule. WRA cannot control the ultimate determinations of the regulatory agencies, the duration necessary to process those permits, or the contents of all requirements that may appear in the final permits.

ESTIMATED COST

Total estimated costs for this project are detailed in the table below. WRA works on a Time and Materials basis and only bills for time actually spent. Estimated costs are subject to change based on specific conditions that arise during the conduct of this work. The Client will be informed if additional fees will be incurred and the reasons for any such increase. Permission will be sought prior to any expenditure beyond what is included in this Scope of Work and estimated budget. The client will be billed monthly on a time and materials basis for work completed to date. It is important to note that this scope of work is our best, conservative estimate of the work required.

CITY OF OAKLEY BETHEL ISLAND ROAD CULVERT LINING PROJECT BUDGET	
Task	Approximate Budget
Task 1: Biological Resources Assessment and Letter Report	\$5,265
Task 2a: Section 1602 Streambed Alteration Agreement	\$4,750
Task 2b. Corps Section 404 Permit	\$5,050
Task 2c. Regional Water Quality Control Board (RWQCB) 401 Certification	\$4,490
Task 3: Project Management and Meetings	\$5,900
Total excluding Contingent Task 4.	\$25,455
Task 4. U.S. Fish and Informal Consultation (Contingent)	\$4,500
Task 5. California Environmental Quality Act Review and Documentation	Not Scoped
Total with Contingent Task 4.	\$29,955

EXHIBIT A
WRA, INC. PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS

1.0 STANDARD OF CARE: The standard of care for all professional services performed or furnished by WRA under this Agreement will be the skill and care used by members of WRA's profession practicing under similar circumstances at the same time and in the same locality. Except as set forth herein, no other warranty, express or implied, is made or intended related to the services provided.

2.0 ESTIMATED COST: The estimated cost for this project is outlined in the attached Scope of Work. This cost is based on assumptions provided in the attached Scope of Work. The estimated cost is subject to change based on specific conditions that arise during the conduct of this work. The Client will be informed if additional fees will be incurred and the reasons for any such increase. Rates are subject to annual increase. Reimbursable expenses including subcontractor fees, mileage, postage, and equipment are charged at cost plus 10%.

All parties understand that the regulatory and legal environments for this type of project are constantly changing and that concerns expressed by governing agencies and the public cannot always be predicted in terms of the proposed project. WRA shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of WRA's obligations results from any cause beyond its reasonable control and without its negligence. WRA is not responsible for unforeseen circumstances that may require additional field work, agency consultation and/or public hearings. WRA will assist Client in resolving these issues; however, it is understood that such work will necessarily be covered under additional task assignments. In the event of a material change in WRA's scope of services or WRA's time or other condition for the performance of services, through no fault of WRA, the compensation due WRA and the time allowed for WRA's performance shall be equitably adjusted. Any such change shall be made in writing by way of an executed Change Order.

WRA will invoice Client for its services on a monthly basis on a time and expenses basis for actual work completed. Payment is due in full within 20 days of the date of any invoice. A service charge of 1.0% per month may be added to all account balances over 30 days past due. If Client disagrees with any portion of an invoice, it shall notify WRA within 10 days of receipt of the invoice, and shall pay the portion not in dispute.

3.0 CONFIDENTIALITY:

All data, documents, discussions or other information developed or received by or for Client in performance of this Agreement are confidential and are not to be disclosed to any person except as authorized in writing by Client, or as required by law.

4.0 NONDISCRIMINATION:

WRA and Client shall abide by the requirements of 41 CFR Parts 60 et seq. (which implement Executive Order No. 11246, Equal Employment Opportunity) and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of the Project. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime consultants and subconsultants take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

5.0 INDEMNIFICATION: To the fullest extent permitted by law, Client and WRA each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, employees, or subconsultants in the performance of services under this Agreement. If claims, losses, damages, or judgments are found to be caused by the joint or concurrent negligence of Client and WRA, they shall be borne by each party in proportion to its negligence. The total liability on all claims arising out of or in any way related to WRA's services or from any cause or causes whatsoever shall not exceed the lesser of the total compensation received by WRA under this Agreement, or the limits of insurance identified herein.

6.0 LEGAL COUNSEL: WRA can advise on regulatory and permitting issues as published in federal and state regulatory notices. However, Client is advised to consult with their independent legal counsel to interpret recent law and court cases

as they relate to wetlands and endangered species compliance. Legal counsel should also be consulted for action(s) that may involve any activities prior to permit issuance. The landowner assumes responsibility for all actions conducted on the land that may lead to enforcement actions by the federal or state government.

7.0 DISPUTE RESOLUTION: Client and WRA agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement. Each party is responsible for payment of its own costs for mediation.

8.0 TERMINATION: Either party may terminate this Agreement at any time upon signed written notice sent or delivered to the other party. All work completed up to the effective notice of termination will be due and payable by Client and all data and/or reports prepared by WRA up to such time shall be provided to Client.

8.1 Ownership of Documents: It is understood and agreed that the plans and specifications prepared by WRA under this Agreement are instruments of professional service intended for one-time use on this project only. It is further understood and agreed that, in the event WRA is precluded from completing all services provided for hereunder, including all construction phase services, and Client elects to have the project completed by others, all such plans and specifications shall become property of Client in accordance with the terms and conditions of this Agreement.

8.2 In consideration thereof, Client shall hold harmless and indemnify WRA from and against any and all claims, suits, demands, damages, liabilities, losses, and costs (hereinafter "Losses"), including but not limited to reasonable attorney's fees and other costs of defense, arising out of or in any way connected with the use of the plans and specifications by Client or any third party 1) for completion of the design of this project by others, 2) for the construction of this project without participation of WRA, or 3) on any project other than the project which is the subject of this Agreement, excepting only those Losses for which WRA is found solely liable by a court or forum of competent jurisdiction.

9.0 FORCE MAJEURE:

Delivery dates, project deadlines and schedules are good faith estimates only, are based upon prompt receipt of all necessary information from Buyer and are subject to assumptions and qualifications set forth in the Scope of Work. WRA shall not be liable for delays in delivery or performance, or failure to manufacture, deliver, or perform, due to causes beyond its reasonable control, including without limitation acts of God or of the Buyer; acts of civil or military authority; acts of terrorism; Governmental priorities; power outages; strikes or other labor disturbances; fires, floods, epidemics, quarantine restrictions, war or riot; delays in transportation; inability to obtain necessary labor, materials, components, services, manufacturing facilities; or any other commercial impracticability. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

10.0 NOTICES: Any notice provided under this agreement will be given in writing. Notices shall be effective on the date of service if served personally on the party to whom notice is to be given, or on the second day after mailing if mailed by first class mail, postage pre-paid addressed to the other party at their address set forth herein or to such other addresses as either party may later specify by notice to the other.

11.0 WORK PRODUCTS: Nothing contained in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or WRA to any other individual or entity. Reports, opinions, work products, and other instruments of WRA's services under this Agreement are for the sole use of Client and the contents thereof may not be used or relied upon by any other individual or entity without the express written approval of Client and WRA. Client understands and agrees that all reports, recommendations and other materials resulting from WRA's efforts are intended solely for purposes of this Agreement, and any reuse or modification by Client or others for purposes outside this Agreement without Consultant's written permission shall be at the Client's sole risk.

12.0 CLIENT RESPONSIBILITIES: So as not to delay the services of WRA: a) Client shall designate in writing a person to act as its representative with respect to WRA's services; b) provide all criteria and full information as to Client's requirements for the Project; c) place at WRA's disposal all available information pertinent to the Project and any site where services are to be performed; d) provide or arrange for legal access and make all provisions for WRA to enter any site where services are to be performed; e) give prompt written notice to WRA whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of WRA's services; f) and provide any notices required to enable WRA to provide services, or provide WRA with authorization to provide such notices as described in the Scope of Work. WRA shall be entitled to rely upon the information, services, and instructions provided by Client and Client's representative.

13.0 OTHER PROVISIONS: This Agreement and attached Scope of Work and Budget constitute the entire agreement between the parties relating to the subject matter contained in it and supersedes all prior and contemporaneous representations, agreements, or understandings between the parties. If any provision of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the other provisions shall remain in full force and effect. No amendment or supplement of this Agreement shall be binding unless in writing signed by the party to be bound. No waiver of any one provision of this agreement shall constitute a waiver of any other provision.

14.0 INSURANCE: The insurance coverage provided by WRA's insurance policies is: Professional Liability: \$1 million per claim and \$2 million in the aggregate; General Liability: \$1 million per occurrence with \$2 million in the aggregate; Employers' Liability under Worker's Compensation: \$1 million; and Auto Liability: \$1 million.

(Approval/Signature Page Follows)

APPROVAL TO PROCEED

For Client:

Signature

Date

Printed Name and Title

Email Address

Firm Name

Phone Number

Street Address

Fax Number

City

State

Zip Code

For WRA, Inc.

Principal

Date

Principal

Date

RESOLUTION NO. ___-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT WITH WRA, INC. FOR BIOLOGICAL AND PERMITTING SERVICES ASSOCIATED WITH BETHEL ISLAND ROAD CULVERT REHABILITATION CIP 177 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fiscal Year 2016/17 Budget, the City of Oakley approved a 5-Year Capital improvement Program (CIP); and

WHEREAS, CIP 177 is to rehabilitate the culvert on Bethel Island Road; and

WHEREAS, before rehabilitation work can begin, permits must be obtained from the California Department of Fish and Wildlife, the Regional Water Quality Control Board and the US Army Corps of Engineers; and

WHEREAS, WRA, Inc. has submitted a proposal to provide biological and permitting services for CIP 177 for an amount not to exceed \$29,955; and

WHEREAS, The FY 2016/17 CIP budget includes fund from Storm Fund for this project; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the City Council of the City of Oakley hereby approves the proposal with WRA, Inc. to provide biological and permitting services for CIP 177 for an amount not to exceed \$29,955, in the form attached hereto as Exhibit A, and authorizes the City Manager to execute into the agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 13th of December, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

ATTEST:

, Mayor

Libby Vreonis, City Clerk

Date



**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF OAKLEY AND WRA, INC. ENVIRONMENTAL
CONSULTANTS FOR BIOLOGICAL AND PERMITTING
SERVICES RELATED TO CIP 177**

THIS AGREEMENT for Biological and Permitting Services related to CIP 177 is entered into by and between the City of Oakley, a municipal corporation in the State of California (hereinafter referred to as "City") and **WRA, Inc. a California Corporation** (hereinafter referred to as "Consultant"), collectively sometimes referred to hereinafter as the "Parties", as of December 13, 2016 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work or proposal letter attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on **January 31, 2018** and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. Should this Agreement be amended to include additional tasks as contemplated in Section 1, the term of services shall be extended as mutually agreed upon by City and Consultant.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Public Works Requirement.** Notice is hereby given that "work performed during the design and preconstruction phases of construction including, but not limited to, inspection

and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code, requiring the payment of prevailing wages and the provisions set out in Exhibit B.

Section 2. COMPENSATION. City hereby agrees to pay Consultant as described in Consultant's proposal, attached as Exhibit A. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from the City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment approved by the City Manager, which shall not exceed the maximum amount allowed by the Oakley Municipal Code.

- 2.5 **Hourly Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit A.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit A, and expenses not listed in Exhibit A are not chargeable to the City.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8 of this Agreement, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and in Exhibit C against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives,

employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Verification of the required insurance is attached hereto and incorporated herein as Exhibit D.

4.1 Variation. The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise sufficiently protected.

4.2 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.3 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to the City, and indemnify and hold the City and its officials, officers, employees, agents, and volunteers harmless from and against any and all losses that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant ("Claims"). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liability is caused by the sole negligence, active negligence, or willful misconduct of the City or any third party.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the indemnitees.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant, Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications,

and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. This Agreement may be extended at the option of the City. Should City decide to exercise its option to extend this Agreement, City shall provide written notice to Consultant at least sixty (60) days prior to the end date of this Agreement. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement, unless City agrees to do so by written amendment to this Agreement. Similarly, Consultant understands and agrees that, City shall have no obligation to reimburse Consultant for any

otherwise reimbursable expenses incurred during the extension period, unless City agrees to do so by written amendment to this Agreement.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 of this Agreement if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described

above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by **Kevin Rohani, Public Works Director/City Engineer** ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.**

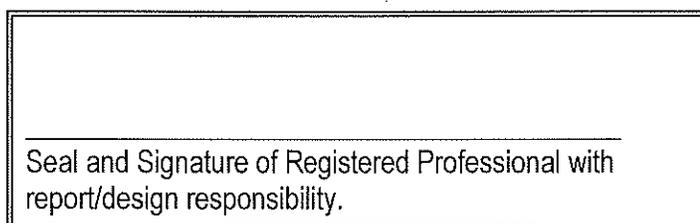
Any written notice to Consultant shall be sent to:

WRA, Inc. Environmental Consultants
Attn: Sean Avent
2169-G East Francisco Blvd.
San Rafael, CA 94901

Any written notice to City shall be sent to:

City of Oakley
Kevin Rohani, Public Works Director/ City Engineer
3231 Main Street
Oakley, CA 94561

- 10.11 Professional Seal.** Where applicable in the determination of the Contract Administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 10.12 Integration.** This Agreement, including the Scope of Work and Compensation Schedule, Provisions Required for Public Works Contracts, Insurance Requirements, and Verification of Required Insurance, attached hereto and incorporated herein as Exhibit A, B, C and D respectively, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services and Compensation Schedule
<u>Exhibit B</u>	Provisions Required for Public Works Contracts
<u>Exhibit C</u>	Insurance Requirements
<u>Exhibit D</u>	Verification of Required Insurance

- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

- 10.14 Authorized Signature.** Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

City of Oakley, a municipal corporation
in the State of California

By: _____
Bryan H. Montgomery, City Manager

Attest:

Libby Vreonis, City Clerk

Approved as to Form:

Derek P. Cole, City Attorney

CONSULTANT

WRA, Inc. Environmental Consultants

By: _____
Signature

By: _____
Name and Title

EXHIBIT A

SCOPE OF SERVICES AND COMPENSATION SCHEDULE

EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25.00 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50.00 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A

mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay 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. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, 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 in performance of the services described in Exhibit A. 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:

1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.
- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT C

INSURANCE REQUIREMENTS

PROFESSIONAL SERVICE CONTRACTS:

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Offer Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(not required if consultant provides written verification it has no employees)
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

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

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with

such work or operations. General liability coverage should be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which Consultant or any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However,

failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT D

VERIFICATION OF REQUIRED INSURANCE