

CITY COUNCIL

Jeffrey T. Cobb, Mayor  
Terry Taylor-Vodden, Vice Mayor  
Larry Domenighini, Council Member  
Lawrence Mello, Council Member  
William "Bill" Spears, Council Member



CITY MANAGER  
Steve Holsinger

CITY CLERK  
Natalie Butler

201 North Lassen Street  
Willows, CA 95988  
(530) 934-7041  
[www.cityofwillows.org](http://www.cityofwillows.org)

**CITY COUNCIL REGULAR MEETING AGENDA**

**Tuesday, July 9, 2013  
7:00 p.m.**

1. Call to Order Willows City Council Regular Meeting - 7:00 p.m.
2. Pledge of Allegiance
3. Roll Call
4. Agenda Review: (Requested Changes by Council or Staff).
  - a) Consider acceptance, by motion, of City Council July 9, 2013, Agenda.
5. Presentations & Proclamations:
  - a) Mayor Cobb will present a "Parks Make Life Better" Proclamation to Recreation Director, Carol Lemenager, in recognition of July as National Parks & Recreation Month.
  - b) Mayor Cobb will present a Proclamation honoring Melba Gollnick, Epsilon Sigma Alpha Sorority, Community Volunteers, Civic Organizations and Individuals for the development of Jensen Park.
6. Public Comment / Written Communications: Members of the public wishing to address the Council on any item(s) *not on the agenda* may do so at this time when recognized by the Mayor/Vice Mayor; however, no formal action will be taken unless placed on a future agenda. (*Public Comment is generally restricted to three minutes*).
7. Consent Agenda: Consent items are considered to be routine by the City Council and will be enacted in one motion. There will be no separate discussion on these items unless a Councilperson or citizen requests, in which event the item will be removed from the consent agenda.
  - a) Consider approval of General, Payroll & Direct Deposit Check Registers.
  - b) Consider adoption of a Resolution ratifying a Memorandum of Understanding (MOU) between the City of Willows and the Willows Employees Association.
8. Public Hearings: None  
(*Persons wishing to speak on a Public Hearing item are asked to approach the microphone to address the Council and limit comments to three minutes. Although not required, it is also requested that you please state your name for the record*).
9. Ordinances: None

10. Items introduced by City Council or Administrative Staff for discussion purposes only:

a)

11. New Business:

- a) Council to consider, discuss and provide direction to staff concerning a request by the Willows Car & Bike Show Association to develop & install a memorial in Jensen Park in honor of a deceased member.
- b) Council to consider approval, by resolution, authorizing the City Manager to sign the Professional Services Agreement with Quincy Engineering for professional engineering services associated with the Reconstruction of N. Butte Street and N. Sacramento Street once authorization for funding is received from Caltrans

12. Council Member Reports:

13. Executive Session: Pursuant to California Government Code Sections 54950 et seq., the City Council will hold a Closed Session. More specific information regarding this closed session is indicated below:

*Pursuant to Government Code Section 54954.3 the public will have an opportunity to directly address the legislative body on the below items prior to the Council convening into Closed Session. Public Comments are generally restricted to three minutes.*

- a) CONFERENCE WITH LABOR NEGOTIATOR(S) Pursuant to Government Code Section 54957.6

Agency Negotiators: City Manager Steve Holsinger  
Finance Director Tim Sailsbery

Employee Organization(s): Unrepresented Employees (i.e., all city employees not represented by the WEA, WPSA, or any other collective bargaining unit)

14. Report-Out of Executive Session:

15. Adjournment:

CERTIFICATION: Pursuant to Government Code §54954.2 (a), the agenda for this meeting was properly posted on or before July 5, 2013.

A complete agenda packet, including staff reports and back-up information, is available for public inspection during normal work hours at City Hall or the Willows Public Library at 201 North Lassen Street in Willows or on the City's website at [www.cityofwillows.org](http://www.cityofwillows.org).

In compliance with the Americans with Disabilities Act, the City of Willows will make available to members of the public any special assistance necessary to participate in this meeting. The public should contact the City Clerk's office at 934-7041 to make such a request. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

The City of Willows is an Equal Opportunity Provider

Resolution \_\_\_\_ 2013

**A Resolution of the City Council of the City Of Willows  
Amending the Compensation Plan and authorizing the  
Execution of a Memorandum of Understanding with the  
Willows Public Employees Association**

**WHEREAS**, the City of Willows Personnel Rules and Regulations; adopted July 21, 1975, require the City Manager to develop a Compensation Plan for City employees; and

**WHEREAS**, the city has met and conferred with the Willows Public Employees Association; and

**WHEREAS**, the results of these negotiations are attached as Exhibit "A" (Public Employees Association Tentative Agreement) and made a part of this resolution.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WILLOWS:** authorizes the City Manager to execute the amendments to the Memorandum of Understanding with the Willows Public Employees Association effective July 1, 2013 through June 30, 2017.

It is hereby certified that the foregoing Resolution No. \_\_\_\_\_ was duly introduced and duly adopted by the City Council of the City of Willows at its regular meeting held on this 9th day of July 2013, by the following Roll Call vote:

AYES in favor of:

NOES:

ABSENT:

ABSTAIN:

Approved

Attested

\_\_\_\_\_  
Jeff Cobb, Mayor

\_\_\_\_\_  
Natalie Butler, City Clerk

**City of Willows - Memorandum of Understanding  
Willows Employees Association**

The City of Willows provides this **Revised counter-proposal** to changes in compensation & benefits and recommends these modifications to a successor Memorandum of Understanding.

Term: July 1, 2013 through June 30, 2017

Benefits: Effective July 1, 2013 all members of the WEA shall agree to a benefit concession as follows:

a. Employee members shall make an additional contribution to the Employee portion of PERS Retirement System equal to three percent (3%) of earnings paid by the city; bringing the total contribution paid by each member employee to four percent (4%) of earnings.

b. Effective July 1, 2014 all members of the WEA shall agree to a benefit concession as follows:

ii Employee members of the WEA shall make an additional contribution to the Employee portion of PERS Retirement System equal to one percent (1%) of earnings paid by the city; bringing the total contribution paid by each member employee to five percent (5%) of earnings.

c. Effective July 1, 2015 all members of the WEA shall agree to a benefit concession as follows:

iii Employee members shall make an additional contribution to the Employee portion of PERS Retirement System equal to two percent (2%) of earnings paid by the city; bringing the total contribution paid by each member employee to seven percent (7%) of earnings.

d. Effective July 1, 2016 all members of the WEA shall agree to a benefit concession as follows:

iv Employee members shall make an additional contribution to the Employee portion of PERS Retirement System equal to one percent (1%) of earnings paid by the city; bringing the total contribution paid by each member employee to eight percent (8%) of earnings; the maximum employee contribution in accordance with State Law.

Cafeteria Plan Benefit:

e. The City of Willows will continue to contribute at the full 100% rate of the Blue Shield Access Plus HMO to the Cafeteria Plan for all members of the Willows Employees Association during Fiscal Year 2013/14; ending June 30, 2014. The City of Willows may continue contributions at this level thru the MOU Term; ending June 30, 2017 contingent upon the following:

If during any Fiscal Period subsequent to FY 2013/14, the increase in premium of the cafeteria plan basis, the Blue Shield Access Plus HMO, is greater than ten percent (10%) occurs, the Cafeteria Plan Benefit will be immediately capped at the new rate. Furthermore, this capping of the Cafeteria Plan Benefit will require the City of Willows and the Willows Employees Association to meet and confer over the level of

Tentative Agreement – Exhibit “A” Resolution of Ratification, July 9, 2013 City Council Session Consent Agenda

contributions to be made during the remaining fiscal periods under the term of this MOU; through June 30, 2017.

Vacation Leave:

f. The City of Willows proposes a cap on accrued vacation hours to a maximum accrual of 360 hours. Utilization of hours shall occur as stated below:

An employee who has been employed by the City for less than five (5) years and who has accrued at least 240 hours of leave at the beginning of the fiscal year shall be required to use at least eighty (80) hours of leave during that fiscal year.

An employee who has been employed by the City for five (5) or more years and who has accrued at least 360 hours of leave at the beginning of a fiscal year shall be required to use at least 120 hours of leave during that fiscal year.

Employees who have accrued less than 360 hours of leave at the beginning of a fiscal year, but who reach the 360 hour limit during that year shall be required to use a certain number of hours of that leave during that year. The number of hours that must be used shall be based on a prorated amount of the minimum-use hours listed above. Any employee who fails to use the required hours of annual leave during the fiscal year shall lose those unused hours.

In the month of September following the end of the prior fiscal year, any employee who has accrued more than 360 hours of leave and has satisfied the minimum use requirement; shall be paid for the hours of leave in excess of 360. Upon separation, an employee shall receive compensation at his or her current salary rate for all unused earned vacation up to and including the date of separation.

All other terms, covenants, conditions, and provisions of the Memorandum of Understanding shall remain intact and shall bind each of the parties accordingly.

For the City of Willows

for the Willows Employees Association

\_\_\_\_\_  
Steve Holsinger, City Manager

\_\_\_\_\_  
Edmund Schnurbusch and/or Mark Entz,  
Employee Representatives

Dated \_\_\_\_\_

Dated \_\_\_\_\_

**AGENDA ITEM**

July 9, 2013

**TO:** Steve Holsinger, City Manager  
**FROM:** Skyler Lipski, Public Works Director  
**SUBJECT:** Memorial in Jensen Park

**RECOMMENDATION**

Staff is seeking discussion and direction regarding the placement of a memorial in Jensen Park.

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**SUMMARY**

City staff has been approached by the Willows Car & Bike Association President to seek permission to place a memorial at Jensen Park in memory of Bill & Charlene Shields.

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**RECOMMENDATION**

Staff is seeking discussion and direction regarding the placement of a memorial in Jensen Park.

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Respectfully submitted,

Skyler Lipski  
Parks & Public Works Director

Approved by

  
Steve Holsinger  
City Manager

Attachments: Exhibit A – Letter from Car & Bike Association President

City of Willows  
Parks Dept  
201 N Lassen St  
Willows, CA 95988

To Whom It May Concern:

On behalf of the Willows Car and Bike Association we are seeking permission to place a memorial at Jensen Park in memory of Bill and Charlene Shields. Bill and Charlene always displayed a true dedication with countless volunteer hours, funded numerous expenses, including printing and purchasing many raffle prizes, all to help benefit the WCBA Scholarship Fund.

Three years ago, shortly after the show, we lost Charlene and just a few months ago we lost Bill. They will be greatly missed. They were a very important part of our committee and were willing to do whatever they could to help with our program for Glenn County High School students continuing their education.

With this said, we would like to do something special to honor them for many years to come. Our thoughts are to pour a cement slab and dedicate a plaque secured within the cement in their memory under the trees close to the gazebo. Our hopes are that this place of honor will be able to allow a bench or picnic table to be placed there and also enhance the park area for the many people who enjoy having it available for their use.

Thank you for your support of the event for all these years. This will be our 27<sup>th</sup> Annual to be held August 16<sup>th</sup> & 17<sup>th</sup>, 2013.

If you have any questions feel free to contact me on the show cell phone at 586-0119.

Sincerely;

Kevin Nelson, President  
Willows Car and Bike Association  
P.O. Box 1115  
Willows, CA 95988

**AGENDA ITEM**

July 9, 2013

**TO:** Honorable Mayor Jeff Cobb and Members of City Council

**FROM:** John Wanger, City Engineer  
Skyler Lipski, Public Works Director

**SUBJECT:** Award of Engineering Contract for Design of N. Butte Street and N. Sacramento Street Reconstruction Projects

**RECOMMENDATION**

Approve the attached resolution authorizing the City Manager to sign the Professional Services Agreement with Quincy Engineering for professional engineering services associated with the Reconstruction of N. Butte Street and N. Sacramento Street once authorization for funding is received from Caltrans

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**SUMMARY**

In an effort to continually upgrade the City's infrastructure, staff identified North Butte Street (between E. Willow Street and E. Wood Street) and N. Sacramento Street (between E. Sycamore Street and E. Wood Street) that are in need of reconstruction. Both of these street segments qualified for both state and federal funding. Exhibits showing the limits of the project are attached.

Reconstruction of both N. Butte and Sacramento Streets includes reconstruction of the structural section of the roadways (both paving and base sections.) In addition to paving, the project will also include replacement of any damaged curb and gutter, as well as sidewalk upgrades for any damaged sidewalks. Installation of new sidewalks is also to be included to fill in existing gaps where no sidewalk currently exists. Curb access ramps will also be evaluated for compliance with ADA standards and, if it is found that ramps are out of compliant, they will be replaced.

In addition to the road structural section rehabilitation, staff has found that the existing 8-inch sewer line in N. Sacramento Street within the project boundaries is in need of replacement. In addition to the sewer main, all sewer laterals (from the main line to behind the curb and gutter) will need to be replaced.

Because both the street rehabilitation and the sewer replacement are maintenance/ replacement of existing facilities, it is anticipated that both projects will be categorical exclusions under both CEQA and NEPA. The environmental clearances for this project will be processed during the design of the improvements.

Because this project will utilize state and federal funding for the street portion of the work and to ensure the City will qualify for reimbursement, staff prepared and circulated a Request for Proposal (RFP) for the purpose of identifying a qualified consultant/team that can assist the City with engineering design services related to this project. RFP's were sent to four firms that staff felt were capable of performing the work. In response to the RFP, the City received two proposals. In reviewing and ranking the proposals, staff unanimously determined that

the most qualified firm was Quincy Engineering out of Sacramento. Quincy demonstrated experience with similar projects and their proposal was very complete and responded to all required points shown in the RFP.

Staff has recently submitted for approval of funding from Caltrans to proceed with the engineering portion of the two street reconstruction projects. It is anticipated that authorization from Caltrans will be received in the next week or two. Accordingly, staff is recommending that the City Council authorize the City Manager to sign the agreement with Quincy Engineering once authorization is received from Caltrans.

If approved, the engineering for both streets and the sewer line replacement should be completed around December 2013 or January 2014. Construction is anticipated in late Spring 2014.

**FINANCIAL CONSIDERATIONS -**

Based on staff's determination of the most qualified firm, staff entered into negotiations with Quincy Engineering to fine tune their scope of work and fee. Based on the results of the negotiation, the following is staff's recommendation for fees:

North Butte Street Reconstruction Engineering Fees	\$ 30,018
North Sacramento Reconstruction Engineering Fees	
Street Reconstruction	\$ 77,980
Sewer Reconstruction	<u>\$ 30,847</u>
Total Engineering Fees	\$138,845

The road rehabilitation portion of the project is being funded through a combination of federal and state monies. N. Butte Street funding from Caltrans consists of \$29,000 for engineering design and \$3,000 for environmental document preparation (total of \$32,000.) N. Sacramento Street funding from Caltrans consists of \$54,000 for engineering and \$3,000 for environmental document preparation (total of \$57,000.)

As can be seen, the engineering fee estimates from Quincy fall within the federal funding for N. Butte Street; however the engineering fees for the street portion of the work for N. Sacramento Street are in excess of funds from Caltrans. For the portion of the funding in excess of what we will receive from Caltrans (\$20,980), staff is proposing that Gas Tax monies be used.

The sewer replacement portion of the project (\$30,018) will be funded through the City's Sewer fund.

Preliminary estimated construction costs include \$276,000 for N. Butte Street and \$661,000 for N. Sacramento Street; however this number will be verified during the design of the improvements.

**NOTIFICATION**

Quincy Engineering

**ALTERNATE ACTIONS**

None recommended

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**RECOMMENDATION**

Approve the attached resolution authorizing the City Manager to sign the Professional Services Agreement with Quincy Engineering for professional engineering services associated with the Reconstruction of N. Butte Street and N. Sacramento Street once authorization for funding is received from Caltrans

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Respectfully submitted,

John Wanger  
City Engineer

Attachments:  
Resolution  
Professional Services Agreement

RESOLUTION No. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF WILLOWS, STATE OF CALIFORNIA,  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE  
AGREEMENT WITH QUINCY ENGINEERING FOR THE DESIGN OF THE NORTH BUTTE  
STREET AND NORTH SACRAMENTO STREET RECONSTRUCTION PROJECT**

**WHEREAS**, as part of the City's overall pavement management plan it has been determined that North Butte Street (between E. Willow Street and E. Wood Street) and N. Sacramento Street (between E. Sycamore Street and E. Wood Street) are in need of reconstruction; and

**WHEREAS**, it has also been determined that the existing 8-inch sewer line in North Sacramento Street is in need of replacement; and

**WHEREAS**, for the street reconstruction work, City staff has applied for and received federal and state grants that have been allocated for funding the street portion of the work associated with these projects; and

**WHEREAS**, due to the federal and state requirements associated with the funding, City staff circulated a Request for Proposal (RFP) to consultants for design of the improvements associated with these projects; and

**WHEREAS**, in response to the RFP, two proposals were received; and

**WHEREAS**, in ranking the proposals, City staff has unanimously determined that Quincy Engineering was the most qualified firm to provide design engineering services; and

**WHEREAS**, City staff has successfully negotiated with Quincy Engineering to determine an appropriate Scope of Work and Fee for this project; and

**WHEREAS**, requests for authorizing the funding for the engineering portion of the street reconstruction projects has been submitted to Caltrans.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Willows does hereby:

1. Authorizes the City Manager to enter into the attached Professional Services Agreement with Quincy Engineer for a not to exceed amount of \$138,845 for the design of the improvements associated with this project once authorization is received from Caltrans.
2. The overall funding for the design portion of the project shall include \$89,000 in state and federal grants from Caltrans, \$30,847 in Sewer Fund monies and \$20,980 in Gas Tax monies.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council on this 9<sup>th</sup> day of July, 2013, by the following vote:

AYES in favor of:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:

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Mayor Jeffrey T. Cobb

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Natalie Butler, City Clerk

# **1. PUBLIC AGENCY AGREEMENT**

## **AGREEMENT**

This Agreement is made and entered into this \_\_\_\_ day of July, 2013 by and between the City of Willows a California Municipal Corporation, 201 North Lassen Street, Willows California, 95988, hereinafter referred to as "Agency", and Quincy Engineering, a California Corporation, hereinafter referred to as "Consultant."

## **RECITALS**

**WHEREAS**, the Agency is in need of professional engineering services associated with the North Butte Street and North Sacramento Street project; and

**WHEREAS**, the legislative body of the Agency on July 9, 2013 by resolution authorized execution of this Agreement on behalf of the Agency in accordance with Chapter 6, Article III of the Agency Municipal Code and/or other applicable law;

**NOW, THEREFORE**, Agency and Consultant, for the consideration hereinafter described, mutually agree as follows:

## **DESCRIPTION OF SERVICES**

The services to be performed under this Agreement (the "Services") are as follows: Design of public improvements associated with the reconstruction of N. Butte Street and N. Sacramento Street. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

## **TERM**

The Agreement term will commence on July \_\_, 2013 and expire on February 28, 2014 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

## **PAYMENT TERMS AND NOT TO EXCEED AMOUNT**

Agency agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the Agency and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the Agency's obligation to pay the Consultant under this Agreement exceed \$138,845, (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to Agency during normal business hours upon reasonable notice. In accordance with California Government Code Section 8546.7, if the Not to Exceed Amount exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency

or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

### **TIME OF COMPLETION**

Consultant must commence performance of the Services upon receipt of written direction to proceed from Agency. Consultant will complete the Services in accordance with this Agreement by February 28, 2014 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

### **INDEPENDENT CONTRACTOR**

Consultant and Agency agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the Agency. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the Agency.

### **SUBCONTRACTING**

Consultant may subcontract portions of the Services upon the prior written approval of the Agency. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the Agency.

### **STANDARD OF PERFORMANCE**

Consultant will perform the Services 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 and will prepare all work products required by this Agreement in a substantial, first-class manner. Consultant will comply with federal, state and local laws applicable to performance of the Services.

### **INDEMNITY**

Consultant agrees to indemnify, defend with counsel acceptable to Agency, and hold harmless Agency and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Agency. Notwithstanding the foregoing, to the extent that this Agreement is a "construction contract" within the definition of California Civil Code Section 2783, as amended from time to time, such indemnity shall not include Liability for the active negligence of Agency employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the A. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the Agency, Consultant shall indemnify, defend, and hold harmless the Agency for

the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its agency.

### INSURANCE

Before commencing performance of the Services, Consultant, at its own cost and expense, must: a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and b) submit to the Agency certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal. Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to the Agency.

Consultant must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the Agency and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

- a. Agency and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant; premises owned,

occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage may contain no special limitations on the scope of protection afforded to Agency or its officials, officers, employees, agents, or volunteers.

- c. Required insurance coverage must be primary insurance with respect to the Agency and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the Agency may be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to Agency and its officers, employees, agents, and volunteers.
- e. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering errors and omissions and containing a cross liability or severability of interest clause acceptable to the Agency. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

All insurance required under this Agreement must be placed with insurers with a Bests' rating of no less than A:VII unless otherwise approved by the Agency.

The Agency may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the Agency interests are otherwise fully protected.

### **NON DISCRIMINATION**

During the performance of this Agreement, the Consultant and its Subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, mental condition (cancer), age (over 40), marital status, and denial of family care leave. Consultants and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Consultants and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, 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 party hereof as if set forth in full. Consultant and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.

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.

### **BUSINESS LICENSE**

Before the Agency will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire at their sole expense a business license from the Agency in accordance with Chapter 5.04 of the Agency Municipal Code. Such licenses must be kept valid throughout the Agreement term.

### **SAFETY**

The Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. The Consultant shall comply with safety instructions issued by the Agency Safety Officer and other Agency representatives. Consultant's 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, the Agency has determined that such areas are within the limits of the project and are open to public traffic. The Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

Consultant must have a Division of Occupational Safety and Health (CAL- OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

### **OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS**

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the Agency. Any modification or reuse of such documents by the Agency without Consultant's prior written consent will be at the Agency's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the Agency.

## TERMINATION AND REMEDIES

Agency may terminate this Agreement for convenience by giving at least 10 days written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. Agency shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

If Consultant materially breaches any term of this Agreement, in addition to any other remedies the Agency may have at law or equity, the Agency may:

- a) Terminate the Agreement by notice to the Consultant specifying the termination effective date;
- b) Retain, and/or recover from the Consultant at no additional cost to the Agency, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;
- c) Complete the unfinished Services itself or have the unfinished Services completed, and/or;
- d) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

## BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon Agency, Consultant, and their successors. Except as otherwise provided herein, neither Agency nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

## REPRESENTATIVES

The Agency representative for purposes of this Agreement will be \_\_\_\_\_ . The Consultant representative for purposes of this Agreement will be \_\_\_\_\_ . The parties designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

## INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the Agency.

## **CONFLICT OF INTEREST PROHIBITION**

Agency and Consultant will comply with the requirements of the Agency's Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following, the Political Reform Act (California Government Code Section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, Section 18110 and following of the California Code of Regulations), California Government Code Section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement.

The Consultant may not perform services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to the Consultant's obligations pursuant to this Agreement. The Consultant agrees to cooperate fully with the Agency and to provide any necessary and appropriate information requested by the Agency or any authorized representative concerning potential conflicts of interest or prohibitions concerning the Consultant's obligations pursuant to this Agreement.

Consultant may not employ any Agency official, officer or employee in performance of the Services, nor may any official, officer or employee of the Agency have any financial interest in this Agreement that would violate California Government Code Section 1090 and following. 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 Agency. If Consultant was an employee, agent, appointee, or official of the Agency 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 Section 1090 and following, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code Section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the Agency reserves all its rights and remedies at law and equity concerning any such violations.

## **SPECIAL FEDERAL CONTRACT PROVISIONS FOR THIS AGREEMENT**

**Subcontractor/DBE Participation.** Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any Subcontractors, and no subcontract shall relieve the Consultant of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the Agency for the acts and omissions of its Subcontractors 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 Subcontractors is an independent obligation from the Agency's obligation to make payments to the Consultant. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to Subcontractors. Consultant shall pay its Subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by the Agency. Any substitution of Subcontractors must

be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute Subcontractor.

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

If the contract has an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE Subcontractor is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE Subcontractor, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

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 Consultant, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. 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 recipient deems appropriate.

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

Performance of DBE Consultant and other DBE Subcontractors/Suppliers. DBE performs a commercially useful function 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 commercially useful function, 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 commercially useful function, 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.

A DBE does not perform a commercially useful function 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.

If a DBE does not perform or exercise responsibility for at least 30 percent 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 commercially useful function.

Prompt Payment of Funds Withheld to Subcontractors. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime Consultant based on these acceptances. The prime consultant, or Subcontractor, shall return all monies withheld in retention from a Subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or Subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or Subcontractor in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient Subcontractor performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE prime consultant and Subcontractors.

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

DBE Records. The Consultant shall maintain records of materials purchased and/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 Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report- Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

Prior to the fifteenth of each month, the Consultant shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner- operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Consultant shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans spc "Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

### DBE Certification and Decertification Status.

If a DBE Subcontractor is decertified during the life of the Agreement, the decertified Subcontractor shall notify the Consultant in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the Agreement, the Subcontractor shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days

Materials or supplies purchased from DBEs will count towards DBE credit and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:

If the materials or supplies are obtained from a DBE manufacturer, 100% of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### PREVALING WAGE

The Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

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.

### **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 10532, the Consultant, Subcontractors and the Agency shall maintain 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 (3) years from the date of final payment under the contract. The state, the State Auditor, the Agency, FHWA or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

### **NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

### **DEBARMENT AND SUSPENSION CERTIFICATION**

The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the Agency.

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.

### **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 Agency employee. For breach or violation of this warranty, Agency 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.

### **PROHIBITION OF EXPENDING AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

The Consultant certifies to the best of his or her knowledge and belief that:

2. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
3. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

### **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 Agency.

**CONSULTANT'S ENDORSEMENT ON PS&E/OTHER DATA**

The responsible Consultant/Engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration.

**APPLICABLE LAW**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement.

**RECOVERY OF ATTORNEY'S FEES**

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will 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.

**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 will 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.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this \_\_\_\_\_ day of July, 2014.

AGENCY

CONSULTANT

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

[Attach Notary Page]

By: \_\_\_\_\_  
Natalie Butler, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Gary Krup, City Attorney

Exhibits: Exhibit A – Consultant's Proposal