

## PROFESSIONAL SERVICES AGREEMENT

### UNION VALLEY PARKWAY, PHASE III CONSTRUCTION SUPPORT SERVICES

This agreement is made upon the date of execution, as set forth below, by, and between the County of Santa Barbara, (hereinafter referred to as "Consultant"), and the City of Santa Maria, California, a Municipal Corporation, (hereinafter referred to as "City").

#### RECITALS

**WHEREAS**, City has determined it is in the public interest to proceed with BID NO. 2012/02, UNION VALLEY PARKWAY, PHASE III hereinafter described as "Project"; and

**WHEREAS**, City has determined the Project involves performance of professional and technical services of a temporary nature; and

**WHEREAS**, City does not have available employees to perform the services for the Project; and

**WHEREAS**, City has requested Consultant to perform services for Project; and

**WHEREAS**, Consultant has employees on staff who are registered or licensed in California to perform professional and technical services for Project;

**THEREFORE**, the parties hereto, in consideration of the mutual covenants contained herein, hereby agree to the following terms and conditions:

#### **1.00 GENERAL PROVISIONS**

##### **1.01 TIME FOR PERFORMANCE**

Consultant shall commence work upon receipt of written direction to proceed from City. Consultant shall cease work upon completion of the project as determined by City Engineer.

Consultant and City agree the schedule represents their best estimates with respect to completion dates and both Consultant and City acknowledge that minor departures from the schedule may occur. Therefore, both Consultant and City will use their best efforts to give reasonable notice to one another of changes to the schedule.

Consultant shall not be responsible for performance delays beyond Consultant's control as determined by the City Engineer, and if the City

Engineer determines such delays shall extend the times for performance of the work by Consultant and if the City Engineer determines delays to be unreasonable in length, the parties agree to negotiate towards an equitable compensation adjustment or the delays will be considered under the terms of Paragraph 5.01.

#### **1.02 SERVICES TO BE PERFORMED BY CONSULTANT**

Consultant shall determine the method, details and means of providing consulting engineering services for the construction of the project known as Bid No. 2012/02, Union Valley Parkway, Phase III.

More specifically, Consultant agrees to perform or provide the services specified in "CONSULTANT - SERVICES TO BE PROVIDED" attached hereto as "Exhibit A" hereby incorporated herein.

Consultant may, at Consultant's own expense, employ such assistants as Consultant deems necessary to perform the services required of Consultant by this agreement. City may not control, direct or supervise Consultant's assistants or employees in the performance of those services.

#### **1.03 PAYMENT TERMS**

City agrees to pay Consultant in accordance with the payment terms set forth in Exhibit "C" which is incorporated by this reference.

### **2.00 OBLIGATIONS OF CONSULTANT**

#### **2.01 MINIMUM AMOUNT OF SERVICE BY CONSULTANT**

Consultant agrees to devote the hours necessary to perform the services set forth in this agreement in an efficient and effective manner. Consultant may represent, perform services for and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business.

#### **2.02 TOOLS AND INSTRUMENTALITIES**

Consultant shall provide all tools and instrumentalities to perform the services under this agreement except those listed in "CITY - SERVICES TO BE PROVIDED" attached hereto as "Exhibit B" and hereby incorporated herein.

## 2.03 WORKERS' COMPENSATION AND OTHER EMPLOYEE BENEFITS

City and Consultant agree that Consultant is an independent contractor and agree that Consultant's employees and agents have no right to workers' compensation and other employee benefits from the City. Consultant agrees to hold harmless and indemnify City for any and all claims arising out of any claim for injury, disability, or death of any of Consultant and Consultant's employees or agents.

## 2.04 INDEMNIFICATION

The City and Consultant acknowledge their respective roles respecting the Project under this Agreement. The City's role is to provide documentation, receive funding, contract for the work of the project, and manage construction. The Consultant's role is to secure right of way, provide documentation, provide construction administration support, take possession of the Project, and maintain it upon its completion. Within the limitation of these roles, the City and Consultant desire to provide mutual indemnity to each other.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully defend, indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the acts or omissions of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage, claim, expense, cost, or liability occurring by reason of the acts or omissions of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement

## 2.05 INSURANCE REQUIREMENTS

Each party shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement. Each party shall obtain additional insured endorsements to the General Liability policies or equivalent respecting the Union Valley Parkway Phase III Project for the

others.

### **3.00 OBLIGATIONS OF CITY**

#### **3.01 COOPERATION**

City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this agreement, specifically including those duties listed in Exhibit "B", hereby incorporated.

### **4.00 TERMINATION OF AGREEMENT**

#### **4.01 TERMINATION ON OCCURRENCE OF STATED EVENTS**

This agreement shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of any party;
2. End of the contract to which Consultant's services were necessary;

#### **4.02 TERMINATION BY ANY PARTY FOR DEFAULT OF ANOTHER PARTY**

Should any party default in the performance of this agreement or materially breach of any of its provisions, a non-breaching party, at its option, may terminate this agreement, immediately, by giving written notice of termination to the breaching party.

#### **4.03 EXTENSION**

This Agreement shall terminate as specified in section 4.02 unless extended as set forth in this Section. Otherwise, the City, with the agreement of Consultant, is authorized to extend the term of this Agreement beyond the termination date, as needed, under the same terms and conditions set forth in this Agreement. Any such extension shall be in writing and be an amendment to this Agreement.

### **5.00 SPECIAL PROVISIONS**

#### **5.01 BREACH OF CONTRACT**

If Consultant materially breaches terms of this agreement, City shall, in addition to other remedies provided by law, have the following cumulative remedies:

- A. Immediately terminate the agreement with Consultant;

- B. Retain the plans, specifications, drawings, reports, electronic media, records, and other documents prepared by Consultant; or
- C. Complete the unfinished work, under this agreement, with a different consultant.

#### 5.02 NON-DISCRIMINATION

During the performance of this agreement, Consultant will not discriminate against any employee or applicant because of race, religion, creed, color, national origin, sex, age, sexual orientation or disability, whether physical or mental.

#### 5.03 EXCLUSIVITY

All plans, specifications, reports, electronic media, records, and other documents prepared by Consultant pursuant to this agreement shall be the joint property of the City and Consultant; City is entitled to full and unrestricted use of such plans, specifications, reports and other documents prepared by Consultant pursuant to this agreement; such plans, specifications, reports, and other documents prepared by Consultant pursuant to this agreement shall be used exclusively on this project and shall not be used on any other work unless deemed necessary by the City.

#### 5.04 RECORDS

Where the payment terms provide for compensation on a time and materials basis, Consultant shall maintain adequate records to permit inspection and audit of Consultant's time and material charges under this agreement. Consultant shall make such records available to City. Once the City receives records, they may become public records unless exempted by law. Such records shall be maintained by Consultant for three years following completion of the work under his agreement.

#### 5.05 COST ESTIMATES

Since Consultant has no control over the cost of labor, materials, or equipment or over the methods used to determine price, Consultant's estimates of construction costs represent Consultant's judgement as a professional. Consultant does not represent, warrant or guarantee that prices for construction may not vary from Consultant's estimates.

#### 5.06 CONFIDENTIALITY

City and Consultant agree that until final approval by City, all data, plans, specifications, reports and other documents are confidential to the extent

permitted by law as interpreted by the City Attorney and will not be released to third parties without the prior written consent of both parties, unless disclosure is required by law.

#### 5.07 EXTRA WORK

New and unforeseen work will be classified as extra work when determined by the City Engineer of the City of Santa Maria that such work is not covered by the terms of this agreement. Extra work shall be paid for on a time and material basis at the rates established in Exhibit "D" of this agreement.

### **6.00 MISCELLANEOUS**

#### 6.01 REMEDIES

The remedies set forth in this agreement shall not be exclusive but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law or equity.

#### 6.02 NO WAIVER

The waiver of any breach by any party of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this agreement.

#### 6.03 ASSIGNMENT

This agreement is specifically not assignable by Consultant to any person or entity. Any assignment or attempt to assign by Consultant, whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement giving rise to a right to terminate as set forth in Section 4.03.

#### 6.04 TIME FOR PERFORMANCE

Except as otherwise expressly provided for in this agreement, should the performance of any act required by this agreement to be performed by either party be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause, except financial inability, not in the control of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this Section shall excuse the prompt payment by either party as required by this agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

#### 6.05 NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this agreement or by law to be served on or given to any party to this agreement shall be in writing and shall be deemed duly served and given when personally delivered or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid to the following address for each respective party:

	<u>PARTY</u>	<u>ADDRESS</u>
A.	Scott McGolpin, Director County of Santa Barbara Public Works Department	123 E. Anapamu Street Santa Barbara, CA 93101
	and	
	Resident Engineer County of Santa Barbara Public Works Department	620 W. Foster Road Santa Maria, CA 93455
B.	David J. Whitehead, P.E. City of Santa Maria	110 S. Pine, #101 Santa Maria, CA 93458-5082

#### 6.06 GOVERNING LAW

This agreement and all matters relating to this agreement shall be governed by the laws of the State of California in force at the time any decision or holding concerning this agreement arises.

#### 6.07 BINDING EFFECT

This agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this Section shall be construed as a consent by City to any assignment of this agreement or any interest in this agreement.

#### 6.08 INTEGRATION CLAUSE

This agreement (including any original counterparts executed by the parties) constitutes the sole and entire agreement between the parties with respect to the subject matter hereof. This agreement correctly sets forth the obligations of the parties hereto to each other as of the date of this agreement. All agreements or representations respecting the subject matter of this

agreement not expressly set forth or referred to in this agreement are null and void.

#### 6.09 TIME

Time is expressly declared to be of the essence of this agreement.

#### 6.10 DUE AUTHORITY

The parties hereby represent that the individuals executing this agreement are expressly authorized to do so on and in behalf of the parties.

#### 6.11 CONSTRUCTION

The parties agree that each party and counsel have reviewed and negotiated this agreement and that any rule of construction to effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

#### 6.12 AMENDMENTS

Amendments to this agreement shall be made only with the mutual written consent of all of the parties to this agreement.





**COUNTY OF SANTA BARBARA**

By: \_\_\_\_\_  
DOREEN FARR, Chair      Date  
Board of Supervisors

**APPROVED AS TO ACCOUNTING:**  
ROBERT W. GEIS  
AUDITOR CONTROLLER

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

**ATTEST:**  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

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

**APPROVED AS TO FORM:**  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel,  
Counsel for COUNTY

**APPROVED AS TO FORM:**  
RAY AROMATORIO  
RISK PROGRAM ADMINISTRATOR

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

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## EXHIBIT "A"

### CONSULTANT - SERVICES TO BE PROVIDED

1. Scope of Services and personnel the County would provide to the City
  - a. Resident Engineer
    - i. County Classification – Civil Engineer Specialist
    - ii. Hourly Rate - \$143.40 (includes Caltrans Approved Overhead Rate)
  - b. Assistant Resident Engineer (Inspector)
    - i. County Classification – Civil Engineer
    - ii. Hourly Rate - \$124.92 (includes Caltrans Approved Overhead Rate)
  - c. County Specialized Support Staff
    - i. County Classification – Civil Engineer/Civil Engineer Associate III
    - ii. Hourly Rate - \$111.05/\$124.92 (includes Caltrans Approved Overhead Rate)
  - d. Office Engineer
    - i. County Classification – Administration Office Professional III
    - ii. Hourly Rate - \$0.0 (covered by County Approved Overhead Rate)
  - e. Materials Engineering Consultant
    - i. Line Item Expense Not To Exceed \$50,000
  - f. Electrical Inspector
    - i. Line Item Expense Not To Exceed \$35,000

## **SCOPE OF SERVICES**

### **Resident Engineer:**

1. Ensures that the contractor complies with all aspects of the contract
  - a. Plans and specifications
  - b. Traffic handling
  - c. Construction safety orders
  - d. Labor compliance
  - e. Materials testing and quality assurance
  - f. Construction surveying (lines and grades)
  - g. Contract working days
2. Claim Mitigation
  - a. Determines changed conditions
  - b. Authority to draft contract change orders
  - c. Provides field engineering solutions
3. Progress Payments
  - a. Oversight, measurement, and tabulation of the contract quantities
  - b. Authorizes monthly progress payments
  - c. Provides the authority to withhold funds
4. Project Closeout
  - a. Determines final punch list
  - b. Prepares statement of final quantities
  - c. Settles claims
  - d. Provides the notice of acceptance

### **Assistant Resident Engineer:**

1. On site, full-time construction inspection
  - a. Reports daily construction activities on personnel, equipment, and item of work performed
  - b. Approves construction performed per plans and specifications
  - c. Coordinates with materials personnel for lab testing and requirements
  - d. Coordinates with construction surveying
  - e. Provides photo documentation
  - f. Performs employee interviews, monthly, per contractor, per classification
  - g. Answers questions, solves minor problems, and reports to the Resident Engineer

### **Specialized County Support Staff:**

1. Assist Resident Engineer with specialized work
  - a. Periodically (estimated at 5% of project duration) will assist Resident Engineer in specialized areas of work such as, but not limited to:

- i. Traffic Controls
  - ii. Temporary and permanent pavement delineation
  - iii. Temporary or permanent traffic signal controls
- This work is generally performed by staff in Public Works Transportation Traffic Section.

**Office Engineer:**

1. Labor Compliance
  - a. Spot checks weekly certified payrolls for proper prevailing wages to be paid during the project.
  - b. Provides DBE documentation and ensures contractor compliance to EEO specifications.
2. Progress Payment Processing
  - a. Performs monthly progress payment actions as per Caltrans.
  - b. Maintains all financial documentation including contingency status sheets for the duration of the project.
3. Project Record Keeping and Filing
  - a. Maintains and keeps in order all contract documentation as per the Caltrans filing system.
  - b. Alerts the Resident Engineer of any shortcomings, anomalies, or violations regarding payments, labor compliance, or file documentation.
  - c. Prepares Statement of Final Quantities and Notice of Completion forms.

**Materials Engineering Consultant:**

1. Performs materials testing and documentation for all soils, aggregates, and manufactured aggregate products.
  - a. As per coordination with the Resident Engineer and the Assistant Resident Engineer – the materials consultant will provide on-site and off-site testing of native soils, and manufactured products as per the minimum requirements specified in the project. This includes work at the manufacturing plants, shop yards, and laboratories.
  - b. Will perform on-site compaction testing.
  - c. Will overview submitted materials mix designs and other material proposals to be incorporated into the work.
  - d. Will perform a final report for all testing performed, locations, failures and re-tests.

**Electrical Inspector:**

1. Performs inspection on, but not limited to, traffic signal controller and components, detection system, and electrical conduits.
2. Inspects Highway Lighting System, including lighting placement, foundations, conduit and electrical system.

EXHIBIT "B"

CITY - SERVICES TO BE PROVIDED

1. Available record information.
2. Review all documents.
3. Receive and review data, studies, calculations, and proposals.
4. Attend meetings with Consultant.
5. Administrate contracts.
6. Process progress payments as submitted by the Consultant and approved by the City Engineer.

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## EXHIBIT "C"

### I. Progress Authorization

Written authorization to proceed from the City authorizes the Consultant to generate the not-to-exceed cost of **FOUR HUNDRED SEVENTY-TWO THOUSAND, SEVEN HUNDRED NINE DOLLARS AND SIXTY-SIX CENTS (\$472,709.66)** in fees for all Tasks based on the rate schedule.

### II. Rate Schedule

Rates as shown on Exhibit "D" (attached) shall be utilized by the Consultant when preparing bills for submittal.

### III. Invoice procedure

- A. Payment shall be made once per month based on the billable charges for the previous month(s).
- B. The Consultant shall present bills for the previous month's charges by the second day of the second month following the month in which services were provided.
- C. Consultant's bills shall be substantiated by appropriate documentation, and include an itemized listing of personnel, subconsultants and other direct costs incurred.

### IV. Maximum billable amounts

Under no circumstance shall the total of all payments to the Consultant exceed ninety percent (90%) of the maximum not-to-exceed cost, prior to acceptance by the City of all items to be completed as noted within Exhibit "A".

**EXHIBIT "D"**  
**CONSULTANT - FEE SCHEDULE**

**863011 Union Valley Parkway Phase 3**  
**CONSTRUCTION ADMINISTRATION ESTIMATE**  
 Construction Engineering Estimate Backup (Based on 210 Working Days (270 Calendar Days)) (March 1st thru November 26)  
**COUNTY OF SANTA BARBARA**

Working Days	Percent Time	Estimated Days	Hours per day	HR	Estimated Total	Estimated Lump Sum	Total	
	210							
Resident Engineer	40.0%	84	8	\$ 143.40	\$ 96,364.80	\$	\$ 96,364.80	
Assistant Resident Engineer	100.0%	210	8	\$ 124.92	\$ 209,865.60	\$	\$ 209,865.60	
County Specialized Support Staff (Supervisor)	5.0%	10.5	8	\$ 124.92	\$ 10,493.28	\$	\$ 10,493.28	
County Specialized Support Staff (Traffic Engineer)	5.0%	10.5	8	\$ 111.05	\$ 9,328.20	\$	\$ 9,328.20	
Office Engineer (Covered by County Administrative Overhead)	50.0%	105	8	\$ -	\$ -	\$	\$ -	
Materials Engineering Consultant						\$ 50,000.00	\$ 50,000.00	
Electrical Inspector						\$ 35,000.00	\$ 35,000.00	
						Total \$	411,051.88	
						15.0% \$	61,657.78	
<b>County of Santa Barbara Total</b>							<b>\$</b>	<b>472,709.66</b>

Contingency - to be used, if needed, should project exceed 270 calendar days.