PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into the ___ day of ___________, 201_, by and between **CITY OF HIGHLAND,** a Municipal Corporation (hereinafter referred to as City), and ____________________________ whose address is ______________________________________ (hereinafter referred to as CONSULTANT), is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the law of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the charter of City.

B. City is calling for Professional Engineering and Environmental Services for the ____ (the Project).

C. City desires to retain CONSULTANT to provide Professional Engineering and Environmental Services.

D. The principal member of CONSULTANT is, for the purpose of this Agreement, ___________________________.

E. City has solicited and received a Proposal from CONSULTANT, dated _____________________________, a copy of which is attached hereto as Exhibit “A” by reference and incorporated herein (the Proposal), has reviewed the previous experience and evaluated the expertise of CONSULTANT, and desires to contract with CONSULTANT under the terms of conditions provided in the Agreement.

F. In entering into this Agreement, City has relied on CONSULTANT’S representations and qualifications as set forth in the Proposal.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

1. TERM

1.1 The term of the Agreement shall commence within ten (10) days from the date specified in the Notice to Proceed issued by the City, and shall terminate 4 years after the date of this agreement, unless terminated earlier as set forth in Section 34.

2 SERVICES TO BE PERFORMED

2.1 CONSULTANT shall diligently perform all of the duties set forth in the scope of services, attached hereto as Exhibit “A” and incorporated herein by reference.

3 COMPENSATION TO CONSULTANT

3.1 City shall pay CONSULTANT for the services in accordance with the provisions of this Section and in accordance with the rate schedule included in this agreement as Exhibit “B”. No rate changes shall be made during the term of this Agreement without prior written approval of City. CONSULTANT’s compensation for all work performed in accordance with this Agreement shall not exceed $_____________.

3.2 CONSULTANT’s not-to-exceed contract amount is inclusive of all travel and out of-pocket expenses.

3.3 CONSULTANT shall submit monthly invoices to City payable by City within thirty(30) days of receipt of invoice, subject to the approval of City. The invoices shall be itemized as to number of hours worked, who performed the service, and what kind of service was performed. Interim billing shall not cover a period of less than a calendar month.

3.4 CONSULTANT shall not receive any compensation for extra work, without prior written authorization of City.

3.5 City shall reimburse CONSULTANT only for those costs or expenses which have
been specifically approved in this Agreement, or specifically approved in writing, in advance by City. The Federal Acquisition Regulations in Title 48, CFR 31 are the governing factors regarding allowable elements of cost.

4 STANDARD OF CARE

4.1 All of the services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with the highest professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City nor have any conflicting contractual relationship with City. CONSULTANT represents and warrants to City that it has or shall, prior to commencing the services, obtain all licenses, permits, qualifications and approvals required of its profession. CONSULTANT further represents and warrants that it shall keep in effect all such licenses, permits and other approvals during the term of the Agreement.

4.1 CONSULTANT shall not be responsible for delay, nor shall CONSULTANT be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove CONSULTANT's work promptly, or delay or faulty performance by City, contractors, or governmental agencies, or any other delays beyond CONSULTANT's control or without CONSULTANT's fault.

5 INDEPENDENT PARTIES

5.1 City retains CONSULTANT on an independent contractor basis and CONSULTANT is not an employee of City. The manner and means of conducting the work are under the control of CONSULTANT, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute CONSULTANT or any of CONSULTANT's employees or agents, to be the agents or employees of City. CONSULTANT shall have the responsibility for and control over the details in means of performing the work provided that CONSULTANT is in compliance with the terms of the Agreement. Anything in this Agreement which may appear to give City the right to direct measure of control over CONSULTANT shall mean that CONSULTANT shall follow the desires of City only with respect to the results of the services.

6 COOPERATION

6.1 CONSULTANT agrees to work closely and cooperate fully with City's designated Project Administrator (the Project Administrator), and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the CONSULTANT on this Project.

7 PROJECT MANAGER

7.1 CONSULTANT shall assign the Project to a Project Manager, who shall coordinate all phases of the Project. The Project Manager shall be available to City at all reasonable times during the Project term. CONSULTANT has designated __________________ to be its Project Manager. CONSULTANT's list of key personnel and subconsultants for the Project is identified in Exhibit "A". CONSULTANT shall not remove or reassign any personnel or sub-consultant designated in this Section or assign any new or replacement person to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to removal or assignment or non-key personnel.

7.2 CONSULTANT, at the sole discretion of City, shall remove from the Project any of its personnel or subconsultant assigned to the performance of services upon written request of City. CONSULTANT warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

8 TIME OF PERFORMANCE

8.1 Time is of the essence in the performance of the services under this Agreement and the CONSULTANT will start work within ten (10) days from the date specified in the Notice to Proceed issued by the City. The failure by CONSULTANT to strictly adhere to the schedule may result in termination of the Agreement by City, and the assessment of damages against CONSULTANT for delay. Notwithstanding the foregoing, CONSULTANT shall not be responsible for delays which are due to causes beyond CONSULTANT's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

8.2 CONSULTANT shall submit all requests for extensions of time for performance in writing to the Project Administrator not later that ten (10) calendar days after the start of the condition which purportedly causes a delay, and not later that the date upon which performance is due. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays, which the Project Administrator determines are beyond CONSULTANT's control.

8.3 For all time periods not specifically set forth herein, CONSULTANT shall respond in the most expedient and appropriate manners under the circumstances, by either telephone, fax, hand delivery or mail.

9 CITY POLICY

9.1 CONSULTANT will discuss and review all matters relating to policy and Project direction with the Project Administrator in advance of all critical decision points in order to ensure that the Project proceeds in a manner consistent with City goals and policies.

10 CONFORMANCE TO APPLICABLE REQUIREMENT

10.1 All work prepared by CONSULTANT shall conform to applicable city, county, state and federal law, policies, rules, regulations and permit requirements and be subject to approval of the Project Administrator. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

10.2 CONSULTANT shall comply with all laws, state or federal and all ordinances, rules and regulations enacted or issued by City.

10.3 The CONSULTANT shall keep himself fully informed of and shall observe and comply with, and shall cause any and all persons employed by him or under him to observe and comply with, all State, Federal, County and City, laws, ordinances, regulations, orders, and decrees which in any manner affect the conduct of the work, including, but limited to, working hours and wages, and the payment of prevailing wages.

Attention is also directed to the provisions in Section 1777.5 of the Labor Code concerning the employment of apprentices by the CONSULTANT or any Sub-consultant under him/it.

11 PROGRESS

11.1 CONSULTANT is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project work, activities performed and planned, and any meetings that have been scheduled or are desired.

12 HOLD HARMLESS

12.1 CONSULTANT shall indemnify, defend, save and hold harmless City, its City Council, boards and commissions, officers, employees, agents, consultants and volunteers, from and against any and all loss, damages, liability, claims, allegations of liability, suits, costs and expenses for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, property damages, or any other claims arising from any and all negligence acts or omissions of CONSULTANT, its employees, agents or subconsultants in the performance of services or work conducted or performed pursuant to this Agreement, excepting only the sole negligence or willful misconduct of City, its officers or employees, agents, consultants and volunteers, and shall include attorney fees and all other cost incurred by City in defending any such claims.

13 INSURANCE

13.1 CONSULTANT shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain the insurance listed below. Any requirement for insurance to be maintained after completion of the work shall survive this agreement.

13.2 The City reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this agreement.

13.3 Workers Compensation & Employers Liability Insurance

a) Required if Consultant has employees.
b) Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
c) Employers Liability with limits of $1,000,000 per Accident; $1,000,000 Disease per employee; $1,000,000 Disease per policy.
d) Required Evidence of Coverage: Properly completed Certificate of Insurance.

e) If Consultant currently has no employees, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

13.4 General Liability Insurance

a) Commercial General Liability Insurance no less broad than Insurance Services Office (ISO) form CG 00 01.
b) Coverage shall be on a standard Occurrence form. Claims-Made forms are not acceptable without prior written consent. Modified, limited or restricted Occurrence forms are not acceptable without prior written consent.
c) Minimum Limits: $1,000,000 per Occurrence; $2,000,000 General Aggregate; $2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, the City requires and shall be entitled to coverage for the higher limits maintained by Consultant.
d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $25,000 it must be approved in advance by the City. Consultant is responsible for any deductible or self-insured retention and shall fund it upon the City's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the City.
e) The City shall be endorsed as an additional insured for liability arising out of operations by or on behalf of the Consultant.
f) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("f" definition of insured contract in ISO form CG 00 01, or equivalent).
g) The insurance provided to the City as an additional insured shall be primary to, and non-contributory with any insurance or self-insurance program maintained by the City.
h) The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
i) Required Evidence of Coverage: Copy of the additional insured endorsement or policy language granting additional insured status; copy of the endorsement or policy language indicating that coverage applicable to the City is primary and non-contributory; and properly completed Certificate of Insurance.

13.5 Automobile Liability Insurance

a) Minimum Limit: $1,000,000 combined single limit per accident.
b) Coverage shall apply to all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this agreement or any extensions of the term.
c) Coverage shall apply to hired and non-owned autos.
d) Required Evidence of Coverage: Properly completed Certificate of Insurance.

13.6 Professional Liability/Errors & Omissions Insurance

a) Minimum Limits: $1,000,000 per claim or per occurrence; $1,000,000 annual aggregate.
b) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $25,000 it must be approved in advance by (Entity).
c) If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
d) Coverage applicable to the work performed under this agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this agreement.
e) Required Evidence of Coverage: Properly completed Certificate of Insurance.

13.7 Standards for Insurance Companies

a) Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

13.8 Documentation

a) The Certificate of Insurance shall include the following reference: (Contract number or project name).
b) The name and address for Additional Insured endorsements and Certificates of Insurance is: (Exact name and address)
c) Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
d) Current Evidence of Coverage shall be provided for the entire required period of insurance.
e) Upon written request, certified copies of required insurance policies shall be provided within thirty (30) days.

14 PROHIBITION AGAINST TRANSFERS

14.1 CONSULTANT shall not assign, sublease, hypothecate or transfer this Agreement or any of the services to be performed under this Agreement, directly or indirectly, by operation of law or otherwise without prior written consent of City. Any attempt to do so without consent of City shall be null and void.

14.2 The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of CONSULTANT, or of the interest of any general partner or joint venturer or syndicate member or cotenant if CONSULTANT is a partnership or joint-venture or syndicate or contenancy, which shall result in changing the control of CONSULTANT, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

15 OWNERSHIP OF DOCUMENTS

15.1 All working papers and reports created in connection with the completion of the Project are the property of the City. All working papers and reports will remain the property of the City.

16 CONFIDENTIALITY

16.1 The information, which results from the services in this Agreement, is to be kept confidential unless the release of information is authorized by City.

17 CITY'S RESPONSIBILITIES

17.1 In order to assist CONSULTANT in the execution of his/its responsibilities under this Agreement, City agrees to provide the following:

a) Identify a City Project Administrator who has the authority to make decisions regarding Project assumptions
b) Have qualified staff available for questions as the project progresses.

18 ADMINISTRATION

18.1 This Agreement will be administered by the City Public Works Department. Ernest Wong, Public Works Director/City Engineer, shall be considered the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his authorized designee shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

19 RECORDS

19.1 For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

20 WITHHOLDINGS

20.1 City may withhold payment of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. CONSULTANT shall not discontinue work as a result of such withholding. CONSULTANT shall have an immediate right to appeal to the City Manager or his designee with respect to such disputed sums. CONSULTANT shall be entitled to receive interest on any withheld sums at the rate of seven percent (7%) per annum from the date of withholding of any amounts found to have been improperly withheld.

21 ERRORS AND OMISSIONS

21.1 In the event of errors or omissions that are due to the negligence or professional inexperience of CONSULTANT which result in expense to City greater than would have resulted if there were not errors or omissions in the work accomplished by CONSULTANT, the additional expense shall be borne by CONSULTANT. Nothing in this paragraph is intended to limit City's rights under any other sections of this Agreement.

22 CITY'S RIGHT TO EMPLOY OTHER CONSULTANT(S)

22.1 City reserves the right to employ other consultant(s) in connection with this Project.

23 CONFLICTS OF INTEREST

23.1 The CONSULTANT or his/its employees may be subject to the provisions

of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose financial interests that may foreseeably be materially affected by the work performed under the Agreement, and (2) prohibits such persons from making, or participating in making decisions that will foreseeably financially affect such interests.

23.2 If subject to the Act, CONSULTANT shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of this Agreement by City. CONSULTANT shall indemnify and hold harmless City for any and all claims for damages resulting from CONSULTANT's violation or this Section.

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

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

24 REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

24.1 CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL 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.

25 PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

25.1 CONSULTANT certifies to the best of his or her knowledge and belief that:

a) No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of 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.

b) 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; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

25.2 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, U.S. 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.

25.3 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.

26 SUBCONSULTANT AND ASSIGNMENT

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

26.2 Except as specifically authorized under this Agreement, the services included in this Agreement shall not be assigned, transferred, contracted or subcontracted without prior written approval of City. All subcontracts exceeding $25,000 in cost shall incorporate all provisions of this Agreement.

27 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

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

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

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

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

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

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

27.8 If a DBE does not perform or exercise responsibility for at least thirty

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

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

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

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

28 COVENANT AGAINST CONTINGENT FEES

28.1 The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

29 COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

29.1 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 cost allow ability of individual items.

29.2 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.

29.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.

30 POST-AWARD AUDIT

30.1 The Cost Proposal (Exhibit "B"), is subject to a post-award audit by Caltrans or FHWA. After post-award audit recommendations are received, the Cost Proposal shall be adjusted by the Consultant and approved by the Department of Transportation, Audits and Investigations External Audit Manager or the District of Local Assistance Engineer, Consultant Contract Manager to conform to the audit recommendations. The Consultant agrees that individual items of cost identified in the audit report may be incorporated into the Agreement at the City of Highland sole discretion. Refusal by the Consultant to incorporate the interim audit or post award recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

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

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

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

30.5 CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is

CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

31 STATEMENT OF COMPLIANCE

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

31.2 During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the 5applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. (For contracts with Federal funding, add paragraphs C & D)

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

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

32 **DEBARMENT AND SUSPENSION CERTIFICATION**

32.1 CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.

32.2 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.

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

33 NOTICES

33.1 All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided.

33.2 All notices, demands, requests or approvals from CONSULTANT to City shall be addressed to City at:

City of Highland
27215 Base Line
Highland, CA. 92346

Attention: Ernest Wong, Public Works Director/City Engineer

33.3 All notices, demands, requests or approvals from City to CONSULTANT shall be addressed to CONSULTANT at:

____
____
____

Attention: _______________, ___________________

34 TERMINATION

34.1 In the event either party hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of seven (7) days, or if more than seven (7) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within seven (7) days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

34.2 Notwithstanding the above, City shall have the option, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) days prior written notice to CONSULTANT as provided herein. Upon termination of this Agreement, City shall pay to the CONSULTANT that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

35 WAIVER

35.1 A waiver by either party or any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

36 **INTEGRATED CONTRACT**

36.1 This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto, and all preliminary negotiations and agreements of whatsoever kind or natures are merged herein. No verbal agreement of an implied covenant shall be held to alter or amend the provisions herein. Any modification of this Agreement will be effective only by written execution signed by both City and CONSULTANT.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as set forth below.

CITY OF HIGHLAND

By: ___________________________
Penny Lilburn
Mayor

Date: __________________________

(NAME OF COMPANY)

By:_____________________________
(NAME)
(TITLE)

Date:____________________

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Exhibit "A"

CONSULTANT Proposal/Scope of Services/Key Personnel

(Attached by Reference)

Exhibit "B"

Consultant's Rate Schedule and Fee