

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 Highland/Redlands Regional Connector Project (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 \_\_\_\_\_, 2015, 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**

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 26.

**2. SERVICES TO BE PERFORMED**

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

### **3. COMPENSATION TO CONSULTANT**

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 "C". 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 \$\_\_\_\_\_.

**3.1** CONSULTANT's not-to-exceed contract amount is inclusive of all travel and out-of-pocket expenses.

**3.2** 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.

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

**3.4** 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.

**4.2** 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**

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**

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**

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 "D".

CONSULTANT shall not remove or reassign any personnel or subconsultant 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.

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**

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.

8.1 CONSULTANT shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition which purportedly causes a delay, and not later than 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.

8.2 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**

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**

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.

## **11. PROGRESS**

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**

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 attorneys= fees and all other cost incurred by City in defending any such claims.

### **13. INSURANCE**

Without limiting CONSULTANT's indemnification of City, and prior to commencement of work, CONSULTANT shall obtain and provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and satisfactory to City. Certification of all required policies shall be signed by a person authorized by that insurer to bind coverage on its behalf and must be filed with City prior to exercising any right or performing any work pursuant to this Agreement. With the exception of workers' compensation and errors and omissions policies, all insurance policies shall:

- Include the City, its officials, officers, employees, agents, consultants and volunteers as additional insureds with respect to performance of Services and shall contain no special limitations on the scope of coverage or the protection afforded to the additional insureds;
- Be primary with respect to any insurance of self insurance programs covering the City, its officials, officers, employees, agents, consultants and volunteers; and
- Contain standard separation of insureds provisions for all liability arising from CONSULTANT's Services as described herein.

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholder's Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest editions of Bests Key Rating Guide unless otherwise approved by the City Risk Manager, as follows:

- A. Worker's compensation insurance covering all employees and principals of CONSULTANT, as required by the laws of the State of California.
- B. Commercial general liability insurance covering third party liability risks, including without limitation, contractual liability, in a minimum amount of \$1 million combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate is used, either the general aggregate shall apply separately to this Project, or the general aggregate limit shall be twice the occurrence limit.
- C. Commercial auto liability and property insurance covering any owned and rented vehicles of CONSULTANT in a minimum amount of \$1 million combined single limit

per accident for bodily injury and property damage.

- D. Professional errors and omissions insurance which cover the services to be performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

Said policy or policies shall be endorsed to state that coverage shall not be canceled, reduced in coverage or amount or modified except after thirty (30) days= prior notice has been given in writing to City. CONSULTANT shall give City prompt and timely notice of claim made or suit instituted arising out of CONSULTANT's operation hereunder. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

CONSULTANT agrees that, in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, CONSULTANT shall look solely to its insurance for recovery. CONSULTANT hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either CONSULTANT or City with respect to the services of CONSULTANT herein, a waiver of any right of subrogation which any such insurer of said CONSULTANT may acquire against City by virtue of the payment of any loss under such insurance.

#### **14. PROHIBITION AGAINST TRANSFERS**

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.

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 contencancy, 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**

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**

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**

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**

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**

CONSULTANT shall keep records and invoices in connection with the work to be performed under this Agreement. CONSULTANT shall maintain complete and accurate records with respect to the costs incurred under this Agreement. All such records shall be clearly identifiable. CONSULTANT shall allow a duly authorized representative of City, the State of California and FHWA to examine, audit and make transcripts or copies of such records during normal business hours. CONSULTANT shall allow inspection of all work, data, documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

## **20. WITHHOLDINGS**

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**

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)**

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

## **23. CONFLICTS OF INTEREST**

- A. 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.
- B. 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 of this Section.

## **24. SUBCONSULTANT AND ASSIGNMENT**

- A. 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.

## **25. NOTICES**

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.

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

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

ABC Consultant

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_, Project Manager

**26. TERMINATION**

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.

26.1 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.

**27. COMPLIANCES**

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

27.1 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.

**28. WAIVER**

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.

**29. INTEGRATED CONTRACT**

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.

**30. COVENANT AGAINST CONTINGENT FEES**

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.

**31. POST-AWARD AUDIT**

The Cost Proposal (Exhibit "C"), 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.

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

**CITY OF HIGHLAND**

By: \_\_\_\_\_  
Name  
Mayor

Date: \_\_\_\_\_

ABC Consultant

By: \_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_

**Exhibit “A”**  
**CONSULTANT Proposal**  
**(Attached by Reference)**

**Exhibit "B"**  
**Scope of Services**

**Exhibit “C”**

**Consultant’s Rate Schedule and Fee**

**Exhibit “D”**

**Consultant’s List of Key Personnel and Subconsultants for the Project**