


**CITY OF TRACY
NOTICE OF REQUEST FOR PROPOSALS**

**PROGRAM MANAGEMENT SERVICES
ON MULTIPLE PROJECTS 2020**

1. NOTICE IS HEREBY GIVEN that the CITY OF TRACY (hereinafter "CITY") requests proposals for the **PROGRAM MANAGEMENT SERVICES ON MULTIPLE PROJECTS** within the City on an as needed basis for a period of three (3) years with an option to extend for an additional two-year period for a total of five (5) years (hereinafter "Project"), and will receive proposals in the **Development Services Department, office of the Fee Program Manager (Management Analyst II), 333 Civic Center Plaza, Tracy, California, up to the hour of 5:00 p.m., on the 10th day of July, 2020.**
2. The services to be performed by the successful proposer are described in the Request for Proposals. Copies of the Request for Proposals are available from (and any questions should be directed to) the CITY at **333 Civic Center Plaza, Tracy, California, 95376, Attention: Veronica Child.** The general scope of services includes providing program management services on multiple development projects and Specific Plans on an as needed basis for a period of up to five (5) years.
3. Proposals shall be submitted and clearly marked as follows: **"SEALED PROPOSAL FOR PROGRAM MANAGEMENT SERVICES ON MULTIPLE PROJECTS – DO NOT OPEN WITH REGULAR MAIL."** Project cost shall be in separate part of this package and in a sealed and marked envelope – PROPOSAL COST.
4. All responsive proposals shall be reviewed and evaluated by the CITY in order to determine which proposer best meets the CITY's needs for this Project by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services. The criteria by which the CITY shall evaluate proposals are set forth in the Request for Proposals.
5. The CITY reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process.



VERONICA CHILD, FEE PROGRAM MANAGER



Date

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1. **DELIVERY OF PROPOSALS.** It is the Proposer's responsibility alone to ensure that the proposal is received by the Fee Program Manager prior to the hour and date for the opening of proposals specified in the Notice of Request for Proposals. Any proposals received by the Fee Program Manager after that hour and date shall be returned unopened.
2. **FORMAT OF PROPOSALS.** All proposals shall be typewritten or printed in ink clearly and legibly, in conformance with the Request for Proposals and submitted in a sealed envelope plainly marked on the outside: **“SEALED PROPOSAL FOR PROGRAM MANAGEMENT SERVICES ON MULTIPLE PROJECTS -- DO NOT OPEN WITH REGULAR MAIL.”** Five (5) copies of the proposal will be required.

The not to exceed cost including fee schedule shall be enclosed separately in another envelope clearly marked **“PROGRAM MANAGEMENT SERVICES” FOR CITY OF TRACY “COST ESTIMATE & FEE SCHEDULE”**. This envelope shall be sealed and inserted inside the above large sealed envelope marked “Sealed Proposal for Program Management Services on Multiple Projects” as listed above.

3. **PRE-PROPOSAL MEETING.** The City may hold a pre-proposal meeting if there is enough interest. All recipients of this RFP will be notified if the meeting is warranted.
4. **QUALITY OF PROPOSAL.** Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the requirements set forth in this Request for Proposals.
5. **CONTENTS OF PROPOSAL.** The Proposer shall include in its proposal, at a minimum, the following information presented in a clear and concise format, in order to demonstrate the Proposer's competence and professional qualifications for the satisfactory performance of the services outlined in the “Scope of Services” section of this Request for Proposals.
 - 5.1 A list of the most recent projects for which the Proposer has performed similar services of similar size, scope, and complexity. This list shall include the name, contact person, address, and phone number of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.
 - 5.2 A list of the Proposer's principals, employees, agents, and subconsultants which the proposer anticipates assigning to this Project. This list shall include a summary of the qualifications, licenses, and experience of each individual; the approximate number of hours each will devote to the Project; and the type of work to be performed by each individual. The CITY will retain under its agreement with the successful Proposer the right of approval of all persons performing under the agreement.
 - 5.3 A detailed description of the methods by which the Proposer intends to perform the work set forth in the Scope of Services. The description shall include, at a minimum, the following items:
 - 5.3.1 A performance and cost schedule for all services necessary to

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complete this Project. The proposal should specify the major components, the cost breakdown by major component or phase, and the expected time of completion for each component based on the scope of services outlined in the proposal.

5.3.2. A total proposed “Not to Exceed” costs of the services based upon a total of 10,000 hours from all classifications of employees, including a Fee Schedule describing all charges and hourly rates for services. The present hourly rates for each classification will be clearly listed. Any cost escalation for the next three years shall also be addressed including COLA adjustments.

5.3.3. Proposed terms for an agreement by which the work shall be performed. The CITY's proposed Professional Services Agreement is attached to this Request for Proposals. The Proposer should specifically indicate in its proposal any clauses in the CITY's proposed Agreement which are unacceptable to the Proposer.

5.4. A statement which discloses any past ongoing or potential conflicts of interest which the CONSULTANT may have as a result of performing the work for this Project.

5.5. A copy of an insurance certificate, or a letter of intent to provide insurance from the issuing company (including a description of types of coverage and dollar amount limits) may be favorably considered.

5.6. The proposal must be signed by an authorized representative of the Proposer.

6. INTERPRETATIONS OF THE REQUEST FOR PROPOSALS. If the Proposer is in doubt as to the meaning of any part of the Request for Proposals, or finds discrepancies in or omissions from the Request for Proposals, the Proposer shall submit to the CITY a written request for an interpretation or clarification prior to the time for opening the proposals. All such requests should be addressed to the CITY at **333 Civic Center Plaza, Tracy, California, 95376 Attn: Veronica Child**. The Proposer shall be responsible for the prompt delivery of the request. The CITY shall not be responsible for any explanation or interpretations of the Request for Proposals other than by written addendum delivered to each Proposer. No oral interpretations of any provision in the Request for Proposals shall be binding upon the CITY.

7. REVIEW OF PROPOSALS. After the proposals are received and opened by the CITY, the CITY shall review and evaluate all proposals for responsiveness to the Request for Proposals in order to determine whether the Proposer possesses the professional qualifications necessary for the satisfactory performance of the services required. The CITY shall also investigate qualifications of all Proposers to whom the award is contemplated, and the CITY may request clarifications of proposals directly from one or more Proposers. It is anticipated that this review period will last up to approximately thirty (30) days. In reviewing the proposals, the CITY may consider the following:

7.1 The experience and past performance of the Proposer and its agents,

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employees, and subconsultants in completing projects of a similar type, size, and complexity. The CITY may consider Proposer's timely and accurate completion of similar projects within budget.

7.2 The feasibility of the proposal based upon the performance and cost schedules, and the methodology to be used by the Proposer.

7.3 Proposer's understanding of the work to be completed based upon the clarity of the proposal and responsiveness to this Request for Proposals.

7.4 Proposer's proposed language for the Professional Services Agreement.

7.5 Proposer's ability to independently perform the required services with minimum or no direction from the CITY.

7.6 The proposals will be reviewed for proposed hourly rates and not the total hours since the total number of service hours needed during the next three years may change at the sole discretion of CITY.

7.7 Scoring chart to be used by the City in reviewing proposals:

RATING CATEGORY	CATEGORY WEIGHT
PROJECT APPROACH	20%
UNDERSTANDING OF WORK TO BE DONE	30%
EXPERIENCE WITH SIMILAR TYPES OF WORK	20%
QUALITY OF THE STAFF PROPOSED TO DO THE WORK	20%
REFERENCES	10%
TOTAL POINTS	100%

8. AWARD OF AGREEMENT. Upon completion of the review period, the CITY shall notify those Proposers whose proposals will be considered for further evaluation and negotiation. All Proposers so notified may be required to make presentations and negotiate in good faith in accordance with direction from the CITY. Any delay caused by Proposer's failure to respond to direction from the CITY may lead to a rejection of the Proposal.

8.1 If the CITY determines, after further evaluation and negotiation, to award the Agreement, a Professional Services Agreement shall be sent to the successful Proposer for the Proposer's signature. No proposal shall be binding upon the CITY until after the Agreement is signed by duly authorized representatives of both the CONSULTANT and the CITY.

8.2 The CITY reserves the right to reject any or all proposals, and to waive any irregularity. The award of the Agreement, if made by the CITY, will be

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based upon a total review and analysis of each proposal and projected costs.

- 9. SCOPE OF SERVICES.** The scope of services set forth in this Request for Proposals represents an outline of the services which the CITY anticipates the successful proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of services to be incorporated into the Professional Services Agreement shall be negotiated between the CITY and the successful proposer. The CITY requests the proposer to suggest changes to the scope of services (as a part of the proposal) in order to achieve the CITY's stated Project Objectives.

9.1 Project Objectives. The CITY's primary objective for this Consultant Agreement is to obtain professional services for providing Program Management Services on Impact Fee Nexus Studies, Impact Fee Program support on multiple development projects and specific plans, and for related professional support on as needed basis for a period of three years. Skill, experience, and knowledge of AB 1600 (Mitigation Fee Act) requirements are required for the requested project support.

9.2 Additional Information. The CITY reserves the right to enter into an agreement with one or two consultants depending upon the CITY's needs and level of effort proposed by the proponent.

The proposals shall provide the names of qualified staff who will be assigned to the project as specified in this proposal. CITY's approval will be required for any proposed staff. During the term of the agreement consultant can not arbitrary withdraw proposed staff without 30 days written notice to CITY.

It is assured that majority of work will be completed by consultant in their office. However, close coordination with CITY is anticipated with a minimum of one weekly meeting with CITY staff and multiple meetings with developers including attending several CITY Council meetings by making presentations.

9.3 Scope of Work. Services for various programs included in this proposal will include but not limited to the following development areas specific plans within the City and within the CITY's influence area as follows:

- Plan C Development Area
- South MacArthur Development Area
- Infill Development Area
- I-205 Specific Plan
- North East Industrial Area Phase 1 and Phase II
- South Industrial Specific Plan
- Fee analysis for Citywide Infrastructure Master Plans
- Cordes Ranch Development Area

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- Tracy Hills Development Area
- Ellis Development Area

The City reserves the right to add or delete any of the areas or Specific Plans listed above from the proposed scope of work at any time during the next three years or during the tenure of this Professional Services Agreement.

The services required will include and not limited to the following:

- Review and update of Development Impact Fees.
- Assist in reconciliation of various funds related to Development Impact Fees.
- Update of Finance and Implementation Plans.
- Review reimbursement requests from developers; calculate the reimbursement amounts after review of construction costs and agreements. Coordinate with various City departments.
- Calculate the Development Impact Fees for various parcels within Development areas or Specific Plans.
- Assist in formation of Assessment Districts or Finance Plans for various parcels within Development areas or Specific Plans.
- Coordinate with other infrastructure consultants to manage, review and recommend City approval for various infrastructure studies within the Development areas.
- Assist in formation of Benefit Districts.
- Prepare agenda items to City Council as directed.
- Meet with City staff, Development community and other consultants to strategize and implement various elements of the programs.
- Prepare cost estimates of various projects.
- Assist City in CIP budget by preparing cost estimates and description of various projects within the Development areas and the Specific Plan areas.
- Prepare miscellaneous correspondence with developers, property owners, local agencies and consultants as required.

- 10. DURATION OF SERVICES.** It is intended that the agreement(s) if signed with qualified consultant(s) will be good for a period of three to five years. However, CITY reserves the right to terminate the agreement any time during the period of the agreement. Consultant may also terminate the agreement any time with 30-days written notice.

[Preparer: Read highlighted sections & comments carefully. Delete all italicized instructions and remove highlighting.]

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH**

[Insert full name of Consultant and Project Name and/or number.]

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and _____ **[Complete name of legal business entity]**, a _____ **[Business status, such as a California corporation]** (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Commented [CAO1]: If a consultant has various agreements with other departments please include name of department in title

Recitals

A. City desires to retain Consultant to **perform XXX services OR provide XXX** services; and

B. **[Include a brief description of the procedures that led up to the Agreement. If an RFP was issued, the Recitals should include the following general information: "On _____, the City issued a Request for Proposals (RFP) for the _____ [full project name and number] (Project). On _____, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services."]**

C. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

D. This Agreement is being executed pursuant to Resolution No. _____ approved by Tracy City Council on _____, 2019.

Commented [CAO2]: If not Council approved, then:
City Manager - This Agreement is being executed pursuant to Tracy Municipal Code section 2.20.090.
Department Head- This Agreement is being executed pursuant to Tracy Municipal Code section 2.20.100.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: _____ **[name of Representative]**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

Commented [CAO3]: Include personnel in exhibit A, if this is important

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

Commented [CAO4]: Include dates in Exhibit A, if this is important

2.1 Term. The term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6. **[OPTION TO EXTEND: This Agreement may be extended for**

an additional XX years by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.]

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$ [redacted]. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval. [If Agreement is fixed or lump sum, revise this section and 3.1 accordingly, and be sure Exhibit B is consistent].

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

Commented [CA05]: If not-to-exceed amount is in excess of \$50,000, Council approval is required pursuant to Tracy Municipal Code section 2.20.080.

Commented [CA06]: If applicable, insert "per fiscal year"

Commented [CA07]: If Consultant asks for escalator clause:

{ Effective [insert date], Consultant's billing rates under this Agreement may be annually increased in January of each year by the lesser of 3% or the annual increase in the Cost of Living Index – All Items, for the Sacramento Metropolitan Region.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination. The City may terminate this Agreement by giving ten days' written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. Dispute Resolution. If any dispute arises between the City and Consultant that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

8. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

9. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

10. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

11. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement 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.

12. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

To Consultant:

[Insert information for both City and Consultant]

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

13. Miscellaneous.

13.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

13.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

13.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

13.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

13.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

13.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

13.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

13.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

13.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

13.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

13.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

13.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

13.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

14. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

The Parties agree to the full performance of the terms set forth here.

City of Tracy

[Insert name and title of City employee (or Mayor) authorized to sign this particular Agreement.]

By: _____
Title: _____
Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Leticia Ramirez, City Attorney

Consultant

[Insert complete legal name of business entity, and business status such as a California corporation, limited liability company, etc.]

By: _____
Title: _____
Date: _____

Federal Employer Tax ID No. _____

[Note: Depending on type of entity, more than one signature may be required. See Instructions for Agreements §§A.5.c and C.2.b.]

By: _____
Title: _____
Date: _____

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A - Scope of Work

[Scope should address 1) who does the work (i.e. names of personnel performing work), if this is important, 2) the work or tasks to be performed; and 3) deadlines for work, if any]

Commented [CA08]: Do not include the Consultant's proposals as the SOW – make sure to format it to fit the requirements of a contract.

EXHIBIT B - Compensation

[If billing rate sheet includes an escalator clause or states that rates are effective to a certain date –then amend Section 3 to include escalator language]