

**DRAFT CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF  
SUNNYVALE AND TJKM TRANSPORTATION CONSULTANTS FOR  
HOMESTEAD ROAD AT HOMESTEAD HIGH SCHOOL PEDESTRIAN AND  
BICYCLE IMPROVEMENTS PROJECT**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and TJKM TRANSPORTATION CONSULTANTS ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during construction and other services for a project known as Homestead High Pedestrian and Bicycle Improvements Project; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Atul Patel to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

- (a) CONSULTANT shall commence services upon receipt of a Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.
- (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "A-1".

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase, and shall include services as identified in Exhibit "A" in the amount of One Hundred Seventy Thousand Nine Hundred Ninety Three and No/100 Dollars (\$170,993) for the duration of the contract, as well as additional or as yet undetermined services in an amount not to exceed Forty One Thousand Nine Hundred Seventy Four and No/100 Dollars (\$41,974) for the duration of the contract. In no event shall the total amount of compensation payable under this agreement exceed the sum of Two Hundred Twelve Thousand Nine Hundred Sixty Seven and No/100 Dollars (\$212,967) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

5. No Assignment of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all

charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

17. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Jennifer Ng, Assistant Director of Public Works/City Engineer  
 Department of Public Works  
 CITY OF SUNNYVALE  
 P. O. Box 3707  
 Sunnyvale, CA 94088-3707

To CONSULTANT: TJKM Transportation Consultants  
 Attn: Atul Patel  
 4305 Hacienda Drive, Suite 550  
 Pleasanton, CA 94588

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY'S reporting requirements to the state and other agencies with respect to CONSULTANT'S work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

32. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

TJKM TRANSPORTATION CONSULTANTS  
("CONSULTANT")

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name/Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name/Title

**EXHIBIT “A”**  
**Scope of Work**  
**Public Works Project No. TR -18-06**  
**Federal Project No. SCL170043**

The consultant will perform all engineering and project management related work necessary to prepare plans and specifications suitable for Public Works bidding.

Consultant services shall include, but are not limited to: Project management preliminary design, design development, bid documents, bidding support, and construction support services, as further detailed below.

**A. Project Information**

1. *Description*

The improvements are at the intersections of Homestead Road and Mary Avenue and Homestead Road and Kennewick Drive. The proposed improvements will consist of civil and traffic signal modifications, including all signing, striping and traffic signal timing modifications to facilitate a reduction in greenhouse gas emissions (GHG) caused by unnecessary vehicle idling, promote bicycle and pedestrian travel, as well as incorporate improvements for pedestrians and bike safety. The work includes but is not limited to the following:

**a. Homestead Road and Mary Avenue**

- Traffic counts, pedestrian and bicycle peak hour counts before a project starts and after one year of the construction of the project is completed.
- Update the phasing from 6 phase to 8 phase, allowing protected left turns for the northbound and southbound directions.
  - A traffic analysis is required. Traffic counts will be needed to make changes to the traffic lanes configuration.
- Timing the pedestrian crosswalks concurrently.
- Evaluation and design for tightening the radius of the southwest corner of the intersection.
- Shortening the south and west pedestrian crosswalks.
- Provide direct path for bicycles to high school from eastbound Homestead Road to Mary bridge trail.
- Install high visibility crosswalks in all directions.
- Install accessible pedestrian push buttons.
- Modify existing traffic signal.

**b. Homestead Road and Kennewick Drive**

- Traffic counts, pedestrian and bicycle peak hour counts before project starts and one year after construction of the project is completed.
- Modify existing traffic signal to allow for in and out circulation at Kennewick Drive signal.
- Install high visibility crosswalks.
- Install green buffered bike lane between MacKenzie Drive and Mary on the south side.
- Install green buffered bike lane between Mary Avenue and Kennewick Drive on the north side.

- Update bicycle specific detection in all directions.
- Install ADA curb ramps at the intersection of MacKenzie Drive and Homestead Road.

Additionally, as part of the requirements of the VERBS program, consultant is expected to perform peak hour vehicular, bicycle, and pedestrian counts at the beginning of the project and upon the completion of the project.

## 2. *Location*

The project improvements are located at the intersection of Homestead Road and South Mary Avenue and part of the project is in the City of Cupertino. Surrounding uses are residential and the high school is in the south side.

## **B. *Project Management***

The consultant will be the primary responsible party for managing the project's schedule and consultant contract budget and monitoring for E-76 procurements. Consultant shall attend design review meetings with City staff following the 30%, 75% and 100% review stages. The consultant is expected to maintain frequent and timely communication with City staff throughout the duration of the project, and address all staff comments and questions.

The consultant will contact the partner agencies including FUHSD and the City of Cupertino to develop and make recommendations on alternatives, strategies to meet the project objectives and goals and facilitate acceptance and approval of the project. Include at least two meetings for coordination with FUHSD and City of Cupertino. Also include provisions for three optional task Board/Commission meetings.

Consultant will take the lead on NEPA clearance through the Federal Aid process. City will prepare CEQA clearance documentation for Categorical Exemption based upon NEPA documentation.

All project schedules shall be prepared in Gantt chart format. Three weeks for each City review shall be included. Schedule updates shall be provided at all progress meetings or as requested by City.

The Consultant will take the lead in preparing all documentation and necessary forms to procure E76 approvals for the construction stages of the project. The Consultant shall be familiar with the latest version of the Local Assistant Procedures Manual.

Consultant's own team should have provisions for quality assurance/quality control over work product prepared for the City. A statement of peer review will be required for overall constructability, coordination, and reasonable reduction in errors and omissions.

The selected consultant will be required to use e-Builder software and protocols included in that software during this project. Consultant is responsible for sending one representative to attend one 2-hour City-provided training session. City will provide consultant with one e-Builder software license for the duration of the project. E-Builder software shall be utilized for all project management documentation and correspondence. The use of project management communications herein described is in addition to and does not replace or change any contractual responsibilities of the consultant.

### **C. Design Development**

Consultants shall be the Engineer of Record and responsible for design and preparation of complete plans, and technical specifications, and recommended revisions to the City's special provisions for the project. The consultant must perform an adequate field investigation to confirm existing conditions. Any subsequent change in the design detail as a result of field conditions that should have been documented during field investigations will be the consultant's responsibility and the design changes will be incorporated at no cost to the City.

Use of contractors, and all applicable subcontractors which are required to pay prevailing wages, requires registration with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, potholing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. For complete details, please refer to Exhibit D: Labor Compliance.

All work is to be in compliance with all applicable rules, regulations, code, law, and good practice for public facilities. When possible, the Consultant shall incorporate "green" building/construction practices, sustainability, energy efficiency, and low operations and maintenance costs into recommendations and subsequent design.

Plans and specifications shall provide sufficient detail to result in a good quality product while allowing competitive pricing where possible and appropriate, and provide options to the contractor where appropriate to obtain the same good level of quality for the best bid price. Plans and specifications shall not specify proprietary products or services. Specifications shall be prepared in CSI 2012 format.

Consultant shall obtain the services of a professional surveyor in order to perform a complete survey of the intersection. Consultant shall provide electronic copies (ACAD format) of each survey location to the City for record. Due to anticipated underground conflicts, potholing to a depth of 6' and diameter per Caltrans specifications at each new pole location shall be included as an item to be performed during the design phase of the project.

The consultant is responsible to conduct traffic counts, pedestrian and bicycle peak hour counts before the project starts and one year after construction of the project is completed at both intersection. Counts will be performed on either Tuesday, Wednesday, or Thursday, not adjacent to holidays or during abnormal weather conditions. School must be in session to conduct the counts. The date and time of the counts will be approved by the City Transportation Engineer.

Coordination and preparation of documentation to facilitate permits and outreach with utility companies (PG&E), regulatory agencies (City of Cupertino), and other stakeholders will also be consultant responsibility. Consultant shall review recommendation with City staff prior to design and coordinate all applicable City standards into plans and specifications.

In general, design documents shall address the following elements and other requirements as given elsewhere in the RFP:

- Plans and specifications shall address major traffic control or physical constraints that may affect the sequence of construction.
- Full compliance with the latest City/Caltrans Standard Plans and Specifications, California Manual on Uniform Traffic Control Devices (CA-MUTCD), Federal Highway Administration (FHWA) Office of Operations Traffic Control Systems Handbook, and California Highway Design Manual (HDM) standards.
- Plans and specifications shall indicate reconstruction in such a manner that the existing roadway remains in operation during construction.

The plans and design documents will include:

- General layout of the project site showing existing conditions, including existing utilities.
- Survey information
- Demolition Plan
- New design layout plan
- Detailed notes for construction
- Detailed construction cost estimates
- Project Specifications

All submittals shall include hardcopies (number specified below) and digital copies (PDF and native format) of all documents. Peer review, QA/QC must be done before all submittals.

1. 30% Submittal: Submit two (2) set of 24" x 36" hardcopies and six (6) sets of 11"x17" hardcopies.
  - a. 30% plans: Cover sheet and plan sheet with base mapping and preliminary details, layout plan for ADA accessible ramps and signal pole locations.
  - b. Cut sheets for equipment/appurtenances.
  - c. Documentation of outreach with franchise utility companies for facilities needed to be relocated or adjusted to grade as a result of the proposed construction activities.
  - d. Project schedule update.
  - e. 30% construction cost estimate.
  - f. Tech Memos and other reports necessary for NEPA clearance.
  - g. Brief memorandum of determination if the project's construction activities are within the NPDES Construction General Permit. Include project type and risk level.
  - h. Table of Contents list for technical specifications.
2. 75% Submittal: All major issues have been resolved prior to this stage. The intent of this submittal is to provide plans and project documents in sufficient detail to allow for thorough and complete review. Applications for Right of Way and Utility Certification and E76 Construction Authorization must be underway. Coordination with PG&E for any service upgrades, disconnect/reconnect service if needed, has begun.

Submit two (2) of 24" x 36" and six (6) sets of 11" x 17" hardcopies for City review.

- a. 75% Plans: All subcontracted work shall be accounted for in this submittal. All project details have been accounted for.
- b. 75% specifications:

- Technical specifications, with the first section including the following:
    - Bid item descriptions and measurement and payment provisions
    - A list of minimum required submittals during construction
    - List of information available to Bidders, with disclaimer
    - A table listing all inspections (including any special inspections and materials testing) and associated responsibility
    - A list of materials requiring warranties, and associated warranty periods
  - c. Project schedule update.
  - d. 75% construction cost estimate in the form of the bid schedule.
  - e. Utility conflicts have been resolved or a timeline for resolution of issues has been determined.
  - f. Responses to the City's review comments on the 30% submittal, along with return of mark-ups.
  - g. Other supporting documentation as necessary such as SWPPP, documents of starting permits necessary for the contractor.
  - h. PG&E coordination
  - i. NEPA clearance has been obtained.
  - j. DBE percentage has been determined and calculation sheets provided to the City.
3. 100% Submittal: All issues, prior comments, and concerns must be addressed in this submittal. The E76 for Construction must be obtained during this stage of the project.

Submit one set of 24" x 36" hardcopies.

- a. 100% plans
  - Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet.
- b. 100% specifications
  - Reviewed bid instructions
  - Finalized technical specifications
- c. Project schedule update.
- d. 100% construction cost estimate.
- e. PG&E coordination
- f. Responses to the City's review comments on the 75% submittal, along with return of mark-ups.
- g. Other supporting documentation as necessary.

#### **D. Bid Package**

The bid package shall be finalized upon incorporation of the City's final comments from the 100% submittal.

Submit copies and digital format (PDF and native format) of each of the documents listed below:

1. One hard copy of full sized plans (24" x 36"), stamped and signed on each sheet by the Engineer of Record and by discipline.
2. One hard copy of the specifications, printed single-sided only.
  - a. Technical specifications, with cover sheet stamped and signed by all necessary disciplines.
3. Final project schedule update.
4. Final construction cost estimate.

#### ***E. Bidding Services***

Consultant will respond to all bidder's requests for information (RFIs), and support the City's coordination efforts to inform plan-holders of significant responses to RFIs and prepare addenda as necessary. During bidding, all proposers' communications will be directed through the City's Purchasing Officer.

#### ***F. Construction Support Services***

The City's construction management team will have primary responsibility for construction management and inspection. The consultant's point of contact will be the City's construction manager, not the contractor.

The following is a minimum list of services and submittals required.

1. Attend and prepare information for an internal handoff meeting from the design team to the construction management team. Consultant shall be prepared to address: possible construction pitfalls, items for the construction management team to be aware of (special working hours, shortened timelines for submittal reviews, etc.).
2. Attend the pre-construction meeting.
3. Attend up 3 periodic construction progress meetings.
4. Participate in the final inspection and development of punch lists.
5. Respond to RFIs, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
6. Review and respond to all submittals within the period allocated in the contract documents and as necessary to avoid construction delays and claims.
7. Review proposed substitutions, if any, for conformance to plans and technical specifications.
8. Review and make recommendations on proposed changes to the contract (Request for Quotations and Contract Change Orders).
9. Prepare Record Drawings based upon red-lines provided by the contractor and field reviews. The Record Drawings shall be prepared digitally, using AutoCAD. Final Record Drawings shall be submitted electronically, in PDF and CAD format.
10. Participate in the "Lessons Learned Meeting" with all parties at the end of the project.

#### ***G. Optional Services***

##### ***1. Additional Potholing***

If additional potholing is required for signal pole foundations or utility potholing, depending on the amount of potholes the City would like to budget for the project, TJKM can outreach BESS Testlab for a quotation for the additional potholes at that time. We

have allocated budget for two additional potholes in our optional task budget. If additional budget is needed based on an updated quote from BESS Testlab, TJKM will request a contract amendment for this amount from the City.

2. Boundary Determination

This task includes the following:

- Obtain Research Preliminary Title Report, existing deeds, and record maps related to the Project area.
- Perform office calculations to facilitate efficient searching and/or recovery of existing boundary evidence for the Project.
- Perform field survey to search and recover boundary evidence that may be utilized in determining the location of the boundary.
- Analyze found boundary evidence and determine the physical location of the road and/or railroad right-of-way as it is required for this Project.

3. Three Meetings with Board/Commission

This task includes the following:

Attendance at three public board or commission meetings to assist with answering questions on the project. City to prepare presentation material for the meetings.

4. Section 106 Report

This task includes the following:

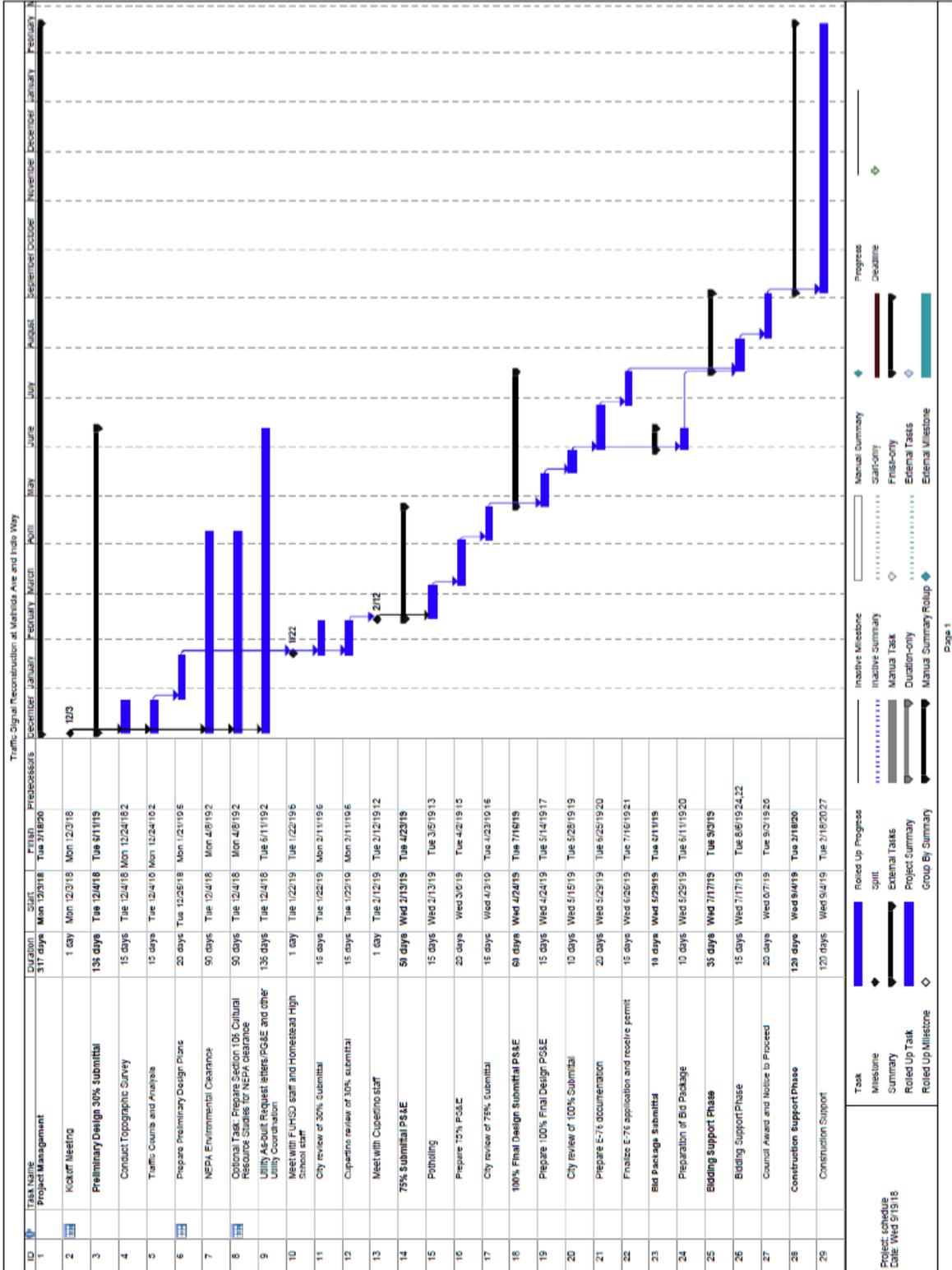
Ground Zone coordinating with WSA to prepare the Section 106 Report, if required by Caltrans Local Assistance Program, based on the PES review. WSA to prepare the report according to Caltrans Local Assistance Guidelines and submit to City for signature prior to submitting to District 4 Caltrans Local Assistance staff for review.

5. Conditions to the Optional Scope

- The Client is responsible for providing any encroachment permits that may be required for work that may occur within the City, in relation to the work described in Optional Tasks 2 and 3 above.
- Client shall provide full access to property, and obtain permission for Siegfried's entry into adjoining properties.

# EXHIBIT "A-1"

## Project Schedule



**EXHIBIT "B"**  
**Compensation Schedule**

Tasks		Labor								Subconsultants								ODCs	Total		
Task #	Task Description (Change task titles as detailed in the scope of work)	PIC	QA/QC	Project Manager	Senior Engineer	Assistant Trans Engineer	Admin	Total Hours	Total Labor Costs	PIC/PM	Engineer II	Technician III	Project Land Surveyor	Instrument man	Admin	Siegfried Total Hours	Total Labor Costs	Environmental	Potholing	Other Direct Costs	Total Fee
		Nayan Amin	Ruta Jariwala	Atul Patel	Rutvij Patel	Andrew Dickinson				Adam Merrill	Mike Ebenal	Mike Kincaid	Kevin Genasci	Derick Weldon				Ground Zone	Bess Test Lab		
		\$250	\$250	\$230	\$180	\$125	\$80			\$219	\$163	\$114	\$193	\$188	\$77			LS	LS		
A	Project Management																				
A-1	Project Initiation				8	8		16	\$2,440		8	4				12	\$1,760				
A-2	Project Management	1		48				49	\$11,290	20					20	\$4,380				\$200	\$15,870
A-2.1	NEPA Clearance Documentation			24				24	\$5,520						0	\$0	\$9,626			\$200	\$15,346
B	Design Development																				
B-1	30% Submittal																				
B-1.1	Traffic Analysis & "Before" & "After" Counts		1	8		32		41	\$6,090						0	\$0				\$2,000	\$8,090
B-1.2	Prepare Topographic Survey					4		4	\$500		4	40	8	28	80	\$12,020					\$12,520
B-1.3	Preliminary Design Plans and Estimates		1	8	4	24		37	\$5,810	8	20	30			58	\$8,432				\$400	\$14,642
B-2	75% Submittal		1	64	24	55	4	148	\$26,485	8	24	30			62	\$9,084		\$11,740	\$400		\$47,709
B-3	100% Submittal		3	16	16	56	2	93	\$14,470	4	12	20			36	\$5,112			\$400		\$19,982
C	Bid Package		1	8	4	24	2	39	\$5,970	2	4	8			14	\$2,002			\$500		\$8,472
D	Bidding Services			1	8			9	\$1,670	2	4				6	\$1,090					\$2,760
E	Construction Support Services			24	24	40		88	\$14,840	10	20	8			38	\$6,362			\$200		\$21,402
	<b>Proposal Subtotal</b>	1	7	201	88	243	8	548	\$95,085	54	96	140	8	28	0	326	\$50,242	\$9,626	\$11,740	\$4,300	\$170,993
	<b>Optional Services</b>																				
A	Additional Potholing	-	-	-	-	4	-	4	\$500	-	-	-	-	-	0	\$0			\$5,000		\$5,500
B	Boundary Determination	-	-	-	-	-	-	0	\$0	-	-	12	28	4	44	\$7,524					\$7,524
C	Three Meetings with Board/Commission	-	-	15	-	-	-	15	\$3,450	-	-	-	-	-	0	\$0				\$500	\$3,950
D	Section 106 Report	-	-	-	-	-	-	0	\$0	-	-	-	-	-	0	\$0	\$25,000				\$25,000
	<b>Total Optional Services</b>	0	0	15	0	4	0	19	\$3,950	0	0	12	28	4	0	44	\$7,524	\$25,000	\$5,000	\$500	\$41,974
	<b>Total Including Optional Services</b>	1	7	216	88	247	8	567	\$99,035	54	96	152	36	32	0	370	\$57,766	\$34,626	\$16,740	\$4,800	\$212,967

## EXHIBIT C INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

**Minimum Scope and Limits of Insurance:** Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence and \$2,000,000 aggregate.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

### **Other Insurance Provisions**

The **general liability** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

### **Claims Made Coverage**

If the General Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase an extended period coverage for a minimum of five years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Sunnyvale for review.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

**Verification of Coverage**

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

## EXHIBIT D LABOR COMPLIANCE

**Contractor Registration with the State of California** – Contractors, and all applicable subcontractors which are required to pay prevailing wages, must be registered with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, pot holing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. Registration must remain current throughout the project entirety. It is the contractor's responsibility to not allow their PWC Registration to lapse during the project and to ensure all Subcontractor's registrations remain current. The Labor Commissioner can assess penalties to public works contractors of up to \$10,000, in addition to the registration fee, for failure to register. Awarding agencies are also subject to penalties of \$100 a day, up to a maximum of \$10,000, for having an unregistered contractor perform work on a public works project. If any penalties are issued to the City for unregistered subcontractors or for a lapse in a contractor/subcontractor's PWC Registration, these penalties will be passed onto the contractor. **A contractor that allows an unregistered subcontractor to work on the project is also subject to penalties of \$100 a day up to \$10,000.** Contractors shall list all applicable PWC registration numbers on the Bid Form.

**Hours of Work** – Pursuant to Labor Code, Section 1810, eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to the City, twenty-five dollars (\$25.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code. Such forfeiture amounts may be deducted from the contract sum.

Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

**Wage Rates** – Pursuant to Sections 1770, 1771 and 1774 of the Labor Code of the State of California, or any applicable local law, contractors shall not pay less than the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations. The City has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. The City has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California,

Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against the City.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify the City who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

**Prevailing Wage** – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the City will be on file at the City's principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the City for Bidder's information only and is not guaranteed by the City to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such subcontractors in the execution of the work.

Contractor shall forfeit to the City, as a penalty, no more than two hundred dollars (\$200.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by contractor or any subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the contractor's bid and will not, under any circumstances be considered as the basis of a claim against the City under the Agreement.

**Certified Payroll Records** – Pursuant to Labor Code, Sections 1776 et. Seq., contractor and all subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. All payroll records shall be certified as being true and correct by contractor or subcontractors keeping such records; and the payroll records shall be provided to the City no later than three weeks after closing of payroll for City-funded projects, and no later than one week for federal aid projects. The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in Labor Code section 1776 (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Certified payroll records shall be made available at reasonable hours at the contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code section 1776. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

Each contractor and every lower-tier subcontractor will be required to submit certified payrolls and labor compliance documentations electronically via the software LCPtracker. Contractor shall cause all subcontracts to include the provision that all subcontractors submit certified payrolls and labor compliance documentation electronically via LCPtracker. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. Each contractor user will be given a Log-On identification and password to access the City's reporting system. Access will be coordinated by a City representative.

**Apprentice Program** – Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, contractor or subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the work. In the event contractor willfully fails to comply with this section, it will be considered in violation of the requirements of the Contract.

Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares the unlawful discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.