1. CALL TO ORDER – DECLARATION OF QUORUM-

Julia Hernandez Present
Amarpreet Dhaliwal Present
Adam Flores Present
Abel Lua Present
Jose Ornelas Present

Staff present was Elizabeth Nunez, City Manager, Hilda Montoy, City Attorney and Lupe Estrada, City Clerk

Guest Present- See Attached

2. APPROVAL OF AGENDA –

Request to move Items: 10E, 10F and Item 12A and 12B following Public Forum.

Motion: Mayor Pro Tem moved to approve agenda as presented with requested changes. The motion was seconded by Councilmember Lua and approved by the following votes: 5 Ayes

3. CONSENT CALENDAR -

A. Approval of Minutes: City Council Meeting Minutes of April 2, 2019
B. Approval - Warrant #’s 050288-050365 -

Motion: Councilmember Ornelas moved to approve 3A and 3B of the consent calendar as presented. The motion was seconded by Mayor Pro Tem and approved by the following votes: 5 Ayes

4. PRESENTATION-

A. Presentation by Golden Plain Unified School District, Superintendent Martin Macias Regarding LCAP program
B. Presentation by- Fresno County EOC, Craig Scharton concerning City’s Collaboration with Fresno County EOC for Benefit of Business Creation, Expansion and Retention-upcoming Salsa Contest
5. HERIFF REPORT – Deputy Oscar Rivas presented the monthly Sheriff’s Report-Informational

6. CITY MANAGER REPORT - Informational

7. PUBLIC FORUM - Information

8. PUBLIC HEARING –

9. OLD BUSINESS –


   Motion: Councilmember Ornelas moved to approved Resolution No. 2019-16, approving the City of San Joaquin 2019 Rehabilitation Program for Roadway Improvements and Maintenance work. The motion was seconded by Mayor Pro Tem Dhaliwal and approved by the following votes: 4 Ayes, 1 Absent (Councilmember Lua)

10. NEW BUSINESS –

    A. Report and Recommendation- Consideration and Approval appointing a Representative in the Upper Kings Basin IRWMA.

    Motion: Councilmember Ornelas moved to appoint the City Manager as Representative in the Upper Kings Basin IRWAM and Assistant City Manager and Councilmember Flores as alternatives. The motion was seconded by Mayor Pro Tem Dhaliwal and approved by the following Votes: 4 Ayes 1 Absent (Councilmember Lua)


    Motion: Mayor Pro Tem Dhaliwal moved to approved Resolution No. 2019-12 Initiating Proceedings for the Annual Levy of Assessment for Assessment District 93-3, Lighting and Landscape Maintenance District of the City of San Joaquin setting a Public Hearing. The motion was seconded by Councilmember Ornelas and approved by the following votes: 4 Ayes, 1 Absent (Councilmember Lua)

    C. Report and Recommendation- Consideration and adoption of Resolution No. 2019-13 In Support of the Safe and Affordable Drinking Water Fund Proposal Including Governor Newsom’s Budget Trailer Bill, Proposal SB 200 (Monning) and AB 217
Motion: Councilmember Ornelas moved to approve Resolution No. 2019-13 In support of the Safe and Affordable Drinking Water Fund Proposal including Governor Newsom’s Budget Trailer Bill, Proposal SB 200 (Monning) and AB 217 (Garcia) Which would establish a new statement and new State safe and affordable drinking water fund to support short and long term drinking water solution and programs such as to support operation and maintenance funding for drinking water treatment and address other critical drinking water needs. The motion was seconded by Mayor Pro Tem Dhaliwal and approved by the following votes: 4 Ayes 1 Absent (Councilmember Lua)

D. Report and Recommendation- Consideration and Approval of Resolution No. 2019-14 Authorizing Acceptance of the Sewer Collection System Improvements Project Authorizing the City Clerk to Record a Notice of Completion with Fresno County and Authorizing the City Manager to make final payment of retention monies to Rolfe Construction.

Motion: Mayor Hernandez moved to approve Resolution No 2019-14 Authorizing Acceptance of the Sewer Collection System Improvement Project Authorizing the City Clerk to Record the Notice of Completion with Fresno County and Authorizing the City Manager to make final payment of retention monies to Rolfe Construction. The motion was seconded by Councilmember Flores and approved by the following votes: 4 Ayes 1 Absent (Councilmember Lua).

E. Report and Recommendation- Consideration and adoption of Resolution No. 2019-15 A Resolution authorizing participation of non-profit community organizations during carnival to be held by California Carnival, in June 2019.

Motion: Councilmember Flores moved to approve Resolution No. 2019-15 Authorizing participation of non-profit community organization during carnival to be held by California Carnival in June. Motion was seconded by Mayor Pro Tem Dhaliwal and approved by the following votes: 5 Ayes

F. Report and Recommendation- Consideration and Approval of Agreement between City of San Joaquin and West Hills Community College District for use of City Facility.

Motion: Mayor Pro Tem Dhaliwal moved to approved Agreement between City of San Joaquin and West Hills Community College District for use of City Facility. Motion was seconded by Councilmember Lua and approved by the following votes; 5 Ayes
G. Report and Recommendation- Consideration and Approval San Joaquin Indians Travel Team Baseball Organization to put a Firework Stand on Northwest of Colorado and Main Street, San Joaquin.

Motion: Mayor Pro Tem Dhaliwal moved to approve San Joaquin Indians Traveling Team Baseball Organization to put a Firework Stand on Northwest of Colorado and Main Street with the required documents submitted prior to operating the Firework Stand. The motion was seconded and approved by the following votes: 5 Ayes

11. CITY ATTORNEY’S REPORT –

12. COUNCILMEMBER COMMUNICATIONS/ANNOUNCEMENTS/AGENDA ITEMS -

A. Discussion and Direction to staff concerning Parks Fees for Non-profit organizations- Councilmember Ornelas-

Motion: Mayor Hernandez moved to direct staff to put the resolution addressing the non-profit organization fee waiver fee discussion and comparing to resolution 2017-21 on the June 4th regular council meeting. The motion was seconded by councilmember Ornelas and approved by the following votes: 5 Ayes

B. Report and Recommendation- Discussion and direction to staff to amend the current Ordinance Chapter 114 Yard Sales. – Councilmember Ornelas (Enclosures P.48-49 Action Item)

Motion: Mayor Hernandez moved to direct staff to amend the current Ordinance Chapter 114 Yard Sales and bring back to June regular council meeting with different options and alternatives for discussion. The motion was seconded by Councilmember Ornelas and approved by the following votes: 4 Ayes 1 absent (Councilmember Lua)

13. CLOSED SESSION –

Conference with Legal Counsel-Existing Litigation (Government Code Section 54956.9) Caudillo v. City of San Joaquin (Superior Court Case #18CECG02124

Went into closed session at 8:14 p.m. came out at 8:24 p.m. Mayor reported no reportable action.

14. ADJOURN MEETING –

Motion: Councilmember Ornelas moved to adjourn the meeting at 8:26 p.m. The motion seconded by Mayor Hernandez and approved by the following votes 4 Ayes 1 Absent (Councilmember Lua)
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<td>Juan T</td>
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1. CALL TO ORDER- Called to order by Mayor Pro Tem Dhaliwal at 11:34 a.m.

ROLL CALL AND DELCARATION OF QUORUM-

Julia Hernandez    Absent, arrived at 11:35 a.m.
Amarpreet Dhaliwal Present
Adam Flores        Present
Abel Lua           Absent
Jose Ornelas       Present

Staff present was Elizabeth Nunez, City Manager and Lupe Estrada, City Clerk

2. THE SOLE BUSINESS TO BE CONDUCTED IS AS FOLLOWS:


Motion: Mayor Pro Tem Dhaliwal motioned the approval of agreement with Krazan & Associates, Inc. for Construction Testing and Inspection Services for Water Storage Tank. The motion was seconded by Councilmember Ornelas and approved by the following votes: 4 Ayes, 1 Absent (Councilmember Lua)

3. ADJOURN MEETING –

Motion: Councilmember Ornelas motion to adjourn the meeting at 11:43 a.m. The motion was seconded by Councilmember Flores and approved by the following votes: 4 Ayes, 1 Absent (Councilmember Lua)
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**Total Checks Paid ----> 129534.78 .00  129534.78**
### CITY OF SAN JOAQUIN

**Automatic Check Listing/Update**

**General Ledger Accounts Summary for May 24, 2019**

**Accounting Period is May, 2019**

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- GF SPECIAL EVNT
- REFUSE-COMMERCI
- MEAS G/FLEX
- GAS TAX
- LTF STRTS/ROADS
- AB 1913/COPS
- LANDSCAPE MAINT
- WATER
- SEWER
- L7-CDBG-12036
- P/R Clearing
- CASH CLEARING

### ACCT Description

- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Accounts Payable
- Cash-Checking/United

### DEPT Description

- Accounts Payable
- Accounts Payable
- Accounts Payable
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TO: San Joaquin City Council
FROM: Mario B. Gouveia, City Engineer
SUBJECT: Resolution of Intention to Levy and Collect the Annual Assessment for Assessment District No. 92-3 and Set a Time and Place for a Public Hearing
DATE: June 4, 2019

BACKGROUND

On November 10, 1992, the San Joaquin City Council adopted Resolution No. 92-31 Initiating Assessment District No. 92-3. Each year, the City of San Joaquin (City) levies annual assessments within its Landscaping, Lighting, and Maintenance District (LLMD). The District now encompasses six areas. There have been no annexations this year.

The Engineer’s Report, Resolution of Intention, and public hearing are requirements set forth in Division 15, part 2, of the Streets and Highways Code of the State of California.

DISCUSSION

On May 7, 2019, City Council initiated proceedings for the annual levy and the City Engineer was directed to prepare the Engineer’s report for the annual levy.

Two meetings are required to complete the annual assessment process. At this regular meeting on June 4, 2019, the City Council will review the draft annual Engineer’s Report detailing the annual assessments and consider the attached Resolution No. 19- declaring the City’s intention to levy and collect the annual assessments. Staff is not seeking adoption of the Engineer’s Report until the second required meeting. The attached resolution sets a public hearing on the proposed levy for July 2nd, 2019. The public hearing will serve as the second required meeting, and staff will seek Council’s formal adoption of the annual Engineer’s Report at that time.

The yearly assessments established for all properties within the District fund the City’s maintenance of streetlight, street, public landscape, and park facilities. The assessments for Areas 1-4 are unchanged from last year. The assessments for Areas 5 and 6 have been adjusted based upon the Consumer Price Index. The Consumer Price Index increased by 3.9% in 2018.

As required by the ACT, the preliminary Engineer’s Report for Assessment District No. 92-3 is on file with the City Clerk. The preliminary Engineer’s Report has a full and detailed description of the improvements, the boundaries of the Assessment District and any zones therein, and the proposed assessments upon the assessable lots and parcels of land within the District. The estimated maintenance costs and credits/deficits for this past year are also included in the report. Payment of the assessment will be collected with the property tax. Any excess funds over the actual
cost of maintenance and administration at the end of the year will be credited to future assessments, and any deficits will be added to future assessments.

RECOMMENDATION

Staff recommends that Council adopt Resolution No. 18-09 and declare the City’s intention to levy and collect the Annual Assessment for Assessment District No. 92-3, and to hold a public hearing on July 2nd, 2019 to hear public testimony regarding the assessments.

ATTACHMENT

Resolution 2019-17
Engineer’s Report
ASSESSMENT REPORT

INDEX

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ASSESSMENT ROLL ............................................................................................ 11
ASSESSMENT DIAGRAMS
CITY OF SAN JOAQUIN
FRESNO COUNTY, CALIFORNIA
LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3
ENGINEER'S REPORT

WHEREAS, on November 10, 1992, the City Council of the City of San Joaquin, California, pursuant to the provisions of the Landscaping and Lighting Act of 1972, California Streets and Highways Code Section 22500 et seq., adopted its Resolution No. 92-31, Resolution Initiating Proceedings for the purpose of collecting assessments to defray the cost of maintaining the street lighting, streets, public landscaping, and parks within designated areas in the City of San Joaquin, more particularly therein described;

WHEREAS, said Resolution Initiating Proceedings directed the Engineer of Work to prepare and file a report in accordance with Article 4 Chapter 1 of the Streets and Highways Code of the State of California, pursuant to Section 22555, including the estimate of costs of improvements and of the incidental expenses in connection therewith, a diagram of the assessment district, and a proposed assessment of the costs of the improvements to which Resolution Initiating Proceedings reference is hereby made for further particulars. The improvements shall consist of the maintenance of all of the street lighting facilities, streets, public landscaping, and parks located in designated areas of the City of San Joaquin.

NOW, THEREFORE, I, Mario B. Gouvela, Engineer of Work of said Assessment District No. 92-3 by virtue of the power vested in me under said Act and the order of the City Council of the City of San Joaquin, hereby make the following annual levy of assessment in accordance with Article 4, Chapter 3 of the Streets & Highways Code of the State of California to cover the portion of the estimated cost of said work and improvements pursuant to the plans and specifications presently on file with the Clerk of the City of San Joaquin and in the Department of Public Works of the City of San Joaquin and incorporated herein by reference and the costs and expenses incidental thereto to be paid by the assessment district set forth in this Report.

As required by said Act, Assessment Diagram of City of San Joaquin Assessment District No. 92-3 shows the assessment district and the boundaries of land within said district as they existed at the time of the passage of the Resolution Initiating Proceedings, each subdivision of land having been given a separate number by reference to County of Fresno Tax Assessor's Parcel Number.

I do hereby assess and apportion said total amount of the cost and expenses of the proposed improvement upon the several subdivisions of land liable therefore and benefited thereby all as is more particularly set forth in the assessment roll attached hereto and incorporated herein; and that the numbers of said assessment roll correspond with the numbers upon the referenced County of Fresno Assessor's Parcel Maps. Said assessment is made upon the several subdivisions of land in the district in proportion to the estimated benefits to be received by each subdivision respectively from the improvement. For a more particular description of said property,
reference is made to the assessment roll and the deeds and maps on file and of record in the office of the County Recorder of Fresno County and to the notes of said Boundary Description as set forth in the map of Proposed Boundaries of City of San Joaquin Assessment District No. 92-3, contained in this assessment report.

Respectfully Submitted,

Mario B. Gouveia, Engineer of Work
ENGINEER'S REPORT

LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3

(Pursuant to the Landscaping and Lighting Act of 1972)

The undersigned respectfully submits the enclosed report as directed by the City Council.

Dated: June 4, 2019

By

Mario B. Gouveia P.E., Engineer of Work

I HEREBY CERTIFY that the enclosed Engineer's Report, together with Assessment and Assessment and Boundary Diagrams of the City of San Joaquin Assessment District No. 92-3, thereto attached, and was filed with me on the 4th day of June, 2019.

Lupe Estrada, City Clerk, San Joaquin, Fresno County, California

By

Lupe Estrada, City Clerk

I HEREBY CERTIFY that the enclosed Engineer's Report, together with Assessment and Assessment and Boundary Diagrams of the City of San Joaquin Assessment District No. 92-3, thereto attached was approved and confirmed by the City Council of the City of San Joaquin, California, on the 2nd day of July, 2019, by its Resolution No. 2019-.

Lupe Estrada, City Clerk, San Joaquin, Fresno County, California

By

Lupe Estrada, City Clerk

I HEREBY CERTIFY that the enclosed Engineer's Report, together with Assessment and Assessment and Boundary Diagrams of the City of San Joaquin Assessment District No. 92-3, thereto attached was approved and confirmed by the City Council of the City of San Joaquin, California, on the 2nd day of July, 2019.

Stan Bulla, Public Works Director, San Joaquin, Fresno County, California

By

Stan Bulla, Public Works Director
CLERK'S CERTIFICATION TO COUNTY AUDITOR
LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3

(Pursuant to the Landscaping and Lighting Act of 1972)

TO THE COUNTY AUDITOR OF THE COUNTY OF FRESNO:

I HEREBY CERTIFY that the attached document is a true copy of that certain Engineer's Report, including assessment and assessment diagram, for Assessment District No. 92-3, City of San Joaquin, confirmed by the City Council of the City of San Joaquin on the 2nd day of July, 2019, by its Resolution No. 2019-.

The document is certified, and is filed with you, pursuant to Section 22641 of the Streets and Highways Code.

DATED: ______________________

By
City Clerk
City of San Joaquin

[SEAL]
The boundaries of the Assessment District are generally described as:

1. Tract No. 4076, Colorado Estates recorded November 29, 1990 in Volume 51 of Plats at Pages 92 & 93, Fresno County Records.


3. Lots 9 through 12 in Block 14, Lots 1 through 12 in Block 24, Lots 1 through 12 in Block 44 and Lots 25 through 36 in Block 43, all in the Townsite of San Joaquin, according to the map thereof recorded in Book 7, Pages 83, 84, and 85 of Plats, Fresno County Records.

4. Lots 46-48 in Block 41 in the Townsite of San Joaquin according to the map thereof recorded in Book 7, Pages 83, 84, and 85 of Plats, Fresno County Records.


15. Tract No. 4893, Casa Mia Estates IV recorded August 16, 2005 in Volume 73 of Plats at Pages 38 and 39 Fresno County Records.

CITY OF SAN JOAQUIN
LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3

DESCRIPTION OF WORK

AREA 1 – Tract No. 4076, Tract No. 4786, and Tract No. 4841

Maintenance of street lights and streets, including sidewalks, within Tract No. 4076, Tract No. 4786 and Tract No. 4841, along the following streets: northeast half of Colorado Avenue; Colorado Court; northwest half of Fifth Street; Nevada Avenue; Fourth Street, Annabella Avenue, Third Street, White Avenue and California Avenue.

AREA 2 – Tract No. 4496, Phase 1, Tract No. 4766, and Tract No. 4865

Maintenance of public landscape areas, street lights, and streets, including sidewalks within Tract No. 4496, Tract No. 4766, and Tract No. 4865, along the following streets: northeast half of California Avenue; northwest half of Main Street; southeast half of Eighth Street; Ninth street; Orlando Court; Punjab Avenue; and Arizona Avenue.

AREA 3 – Portions of Blocks 14, 24, 43, and 44 of the Townsite of San Joaquin, Tract No. 4816, and Tract No. 4829

Maintenance of street lights and streets, including sidewalks, along the following streets: southeast half of 12th Street, from the southwest line of Lot 9 in Block 14 to the southwest boundary of Arizona Avenue; northwest half of 12th Street, from the centerline of California Avenue to the southwest boundary of Arizona Avenue; California Avenue, from southeast boundary of Lot 12 in Block 24 to the centerline of 12th Street; northeast half of California Avenue, from the centerline of 12th Street to the northwest boundary of Lot 34 in Block 43; southwest half of Arizona Avenue, from the southeast line of Lot 12 in Block 44 to the northwest boundary of Lot 25 in Block 43; all in the Townsite of San Joaquin.

Maintenance of public landscape areas, street lights and streets, including sidewalks, within Tract No. 4816 and Tract No. 4829 along the northeast half of California Avenue and the southeast half of Main Street, Punjab Street, Deep Street and Aman Street.

AREA 4 – PM No. 99-01, PM No. 98-03, and PM No. 99-02

Maintenance of street lights and streets, including sidewalks, within Parcel Map No. 99-01, Parcel Map No. 98-03, and Parcel Map No. 99-02, along the north half of Manning Avenue and the northeast half of Colorado Avenue.

AREA 5 – Tract No. 4871 and Tract No. 4893

Maintenance of street lights and streets, including sidewalks, within Tract No. 4871 and 4893 along the following streets: northeast half of Colorado Avenue; Elm Avenue; First Street; First Court; Annabella Avenue; Second Street and Second Court.

AREA 6 – Tract No. 5814

Maintenance of street lights and streets, including sidewalks along public streets within Tract No. 5814 along Main Street, Arizona Street, Deep Street and Aman Street. Also included is maintenance of landscaping along Main Street bordering Tract No. 5814.
CITY OF SAN JOAQUIN
LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3

ASSESSMENT PROCEDURE

The assessment district boundaries coincide with the boundaries of six specific development projects within the city limits of the City of San Joaquin. Each project is designated as Area 1, Area 2, Area 3, Area 4, Area 5 and Area 6 respectively, as described herein.

Assessments for lots in Areas 1 through 4 cannot be raised without a vote of the lot owners per the requirements of Proposition 218. Assessments for Areas 5 and 6 are adjusted annually based on the Consumer Price Index (CPI).

The total net costs for each area are as follows:

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<th>Cost</th>
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<td>Total Cost</td>
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The total numbers of parcels is 352 and are described by Area designation as follows:

Area 1 contains seventy-six (76) single-family residential lots, four (4) residential lots zoned for duplexes, one (1) 4.39 acre parcel zoned for a residential planned unit development, and four (4) commercial lots. The duplex lots and single-family lots are assessed for maintenance of fronting street and street light improvements on Fifth Street, Nevada Avenue, Third Street, Fourth Street, Annabella Avenue, White Avenue and California Avenue on a per lot basis. The one (1) residential planned unit development parcel and the four (4) commercial lots are not assessed.

There are five (5) parcels in Area 1 that are owned by the County of Fresno Housing Authority which are tax-exempt and are not assessed.

Area 2 contains eight-three (83) single-family residential lots, and one (1) park parcel. The single-family residential lots and park parcel are assessed for maintenance of fronting street, street light and side yard landscaping along California Avenue and Main Street on a per lot basis.

Area 3 contains thirty-five (35) single-family residential lots and fifty-two (52) lots containing half of a duplex. Each lot is assessed for maintenance of fronting street, landscaping, and street light improvements on 12th Street, California Avenue, Punjab Street, Deep Street, Aman Street, Main Street and Arizona Avenue.

Area 4 contains five (5) commercial lots. Each lot is assessed an equal share for maintenance of fronting street and street light improvements on Manning Avenue and Colorado Avenue. Assessments vary by parcel size.

Area 5 contains sixty-two (62) single-family residential lots and one (1) commercial lot. The single-family residential lots and commercial lot are assessed for maintenance of fronting street, landscaping and light
improvements on Colorado Avenue; Elm Avenue; First Street; Second Street; Annabelle Avenue; First Court and Second Court. Assessments in Area 5 are subject to adjustments based on changes in the Consumer Price Index (CPI). The CPI increased 3.9% in 2018.

Area 6 contains forty-six (46) multi-family residential lots and four (4) outlots. The multi-family lots are assessed for maintenance of fronting streets and lighting facilities, and landscaping along Main Street. The four (4) outlots are not assessed. Assessments in Area 6 are subject to adjustments based on changes in the Consumer Price Index (CPI). The CPI increased 3.9% in 2018.

Formation and incidental costs were assessed to each parcel or lot on an equal basis.
CITY OF SAN JOAQUIN
LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 92-3

COST SUMMARY
2019 – 2020

ESTIMATE OF ASSESSMENT DISTRICT IMPROVEMENT COSTS

The estimate of Assessment District improvement costs for fiscal year 2019-2020 is as follows:

AREA 1
1. INCIDENTAL COSTS $ 709.02
2. UTILITIES COST 844.01
3. MAINTENANCE COST 3,984.57
   TOTAL COSTS $ 5,537.60
   TOTAL COST TO ASSESSMENT $ 5,537.60

TOTAL NUMBER OF ELIGIBLE PARCELS 80
TOTAL NUMBER OF PARCELS 85
(80 lots @ $69.22 and 5 lots @ $0.00)

AREA 2
1. INCIDENTAL COSTS $ 733.60
2. UTILITIES COST 873.28
3. MAINTENANCE COST 4,122.22
   TOTAL COSTS $ 5,729.10
   TOTAL COST TO ASSESSMENT $ 5,729.10

TOTAL NUMBER OF ELIGIBLE PARCELS 65
TOTAL NUMBER OF PARCELS 65
(65 lots @ $88.14)

AREA 3
1. INCIDENTAL COSTS $ 589.08
2. UTILITIES COST 701.24
3. MAINTENANCE COST 3,310.54
   TOTAL COSTS $ 4,600.86
   TOTAL COST TO ASSESSMENT $ 4,600.86

TOTAL NUMBER OF ELIGIBLE PARCELS 87
TOTAL NUMBER OF PARCELS 87
(35 lots @ $73.54 and 52 lots @ $38.98)
AREA 4

1. INCIDENTAL COSTS $ 244.60
2. UTILITIES COST 291.18
3. MAINTENANCE COST 1,374.64
   TOTAL COSTS $ 1,910.42
   TOTAL COST TO ASSESSMENT $ 1,910.42

TOTAL NUMBER OF ELIGIBLE PARCELS 5
TOTAL NUMBER OF PARCELS 5

(Varies by Parcel Size)

AREA 5

1. INCIDENTAL COSTS $ 1,097.02
2. UTILITIES COST 1,305.85
3. MAINTENANCE COST 6,165.04
   TOTAL COSTS $ 8,567.91
   TOTAL COST TO ASSESSMENT $ *8,566.54

TOTAL NUMBER OF ELIGIBLE PARCELS 63
TOTAL NUMBER OF PARCELS 63
(52 lots @ *$130.20 and 1 lot @ * $494.14)

AREA 6

1. INCIDENTAL COSTS $ 264.32
2. UTILITIES COST 314.66
3. MAINTENANCE COST 1,485.21
   TOTAL COSTS $ 2,064.19
   TOTAL COST TO ASSESSMENT $ *2,063.56

TOTAL NUMBER OF ELIGIBLE PARCELS 46
TOTAL NUMBER OF PARCELS 46
(46 lots @ *$44.86)

* Amount rounded down one cent to conform to County Auditor requirements that the amount to be billed to the tax payer must be an even amount (divisible by 2)
# ASSESSMENT ROLL

CITY OF SAN JOAQUIN  
FRESNO COUNTY, CALIFORNIA

LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO.92.3

(Fiscal Year 2019-2020)

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NOTICE OF PUBLIC HEARING

Notice is hereby given that at 6:00 p.m. on June 4, 2019, the City of San Joaquin City Council will hold a Public Hearing at 21991 Colorado Avenue (B), San Joaquin, CA to consider the following:

The Council proposes to undertake proceedings for the levy of the annual assessment of the District under Part 2 of Division 15 of the Streets and Highways Code of the State of California (Section 22500 et seq.) generally known as the Landscaping and Lighting Act of 1972 (Herein the “Act”).

Persons interested should appear at the above Public Hearing on June 4, 2019, in order to make their comments known. Persons who are unable to attend may direct written comments to Elizabeth Nunez, City Manager at 21900 Colorado St. or P.O. Box 758, San Joaquin, CA 93660.

In addition, information regarding the project, including staff report, may be reviewed or obtained from the City Clerk at the above address, weekdays between the hours of 8:30 am to noon, and 1:00 to 4:30 pm.

If you require special accommodations to participate in the public hearing, please contact Lupe Estrada at (559) 693-4311

Elizabeth Nunez
City Manager
RESOLUTION NO. 2019-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
INTENT TO LEVY AND COLLECT THE ANNUAL
ASSESSMENT FOR ASSESSMENT DISTRICT NO. 92-3
OF THE CITY OF SAN JOAQUIN AND SETTING A PUBLIC HEARING

WHEREAS, the City Council initiated proceedings to levy annual assessments for Assessment District No. 92-3 and directed the City Engineer to prepare and file his report with the City Council as required by Streets and Highways Code Section 22565 et. seq.; and

WHEREAS, the City Engineer filed his report with the City Clerk as directed.

NOW THEREFORE, by the City Council of the City of San Joaquin, County of Fresno, California, resolves as follows:

1. It is intention of said Council to order the levy and collection of an assessment under the Landscaping and Lighting Act of 1972, Part 2 of Division 15 of the Streets and Highways code (beginning with Section 22500 of said Code and herein after referred to as the “Act”) for Assessment District No. 92-3 of the City of San Joaquin (herein “District”) for fiscal year 2019-2020.

2. Said District is generally described as Tract No. 4076, Tract No. 4496-Phase 1, Lots 9-12 in Block 14, Lots 1-12 in Block 24, Lots 1-12 in Block 44, Lots 25-36 in Block 43, Lots 46-48 in Block 41 in the Townsite of San Joaquin, Parcel Map No. 99-01, Parcel Map No. 98-03, Parcel Map No. 99-02, Tract No. 4816, Tract No. 4786, Tract No. 4841, Tract No. 4766, Tract No. 4829, Tract No. 4865, Tract No. 4871, Tract No. 4893, and Tract No. 5814. Improvements to be maintained are generally described as streetlights, streets, public landscaping, and parks within the District.

3. The Engineer has prepared and filed with the Clerk of the City of San Joaquin a preliminary report labeled Engineer’s Report of the City of San Joaquin Assessment District No. 92-3, dated June 4, 2019, which reference is hereby made for a detailed description of the improvements, the boundaries of the assessment district and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the District. The Engineer’s Report is hereby approved as submitted.

4. The Westside Advance, a newspaper published in Kerman, California and circulated in the City of San Joaquin is hereby designated as the newspaper in which this Resolution of Intention shall be published, and the Clerk of the City of San Joaquin is hereby directed to cause this Resolution of Intention to be published once. Publication shall be completed not less than ten (10) days before the date set for the hearing.

5. NOTICE IS HEREBY GIVEN that the 2nd day of July, 2019, at the hour of 6:00 p.m., in the regular meeting place of the Council of the City of San Joaquin, Council Chambers, 21991 Colorado Avenue, San Joaquin, California 93660 is hereby fixed as the time and place for a
public hearing when and where all interested persons shall be heard on the question of the levy and collection of the proposed assessments. Written protests may be filed with the City Clerk at any time prior to the conclusion of the hearings. A written protest shall state all grounds of objection and shall contain a description sufficient to identify the property owned by the protesting person or persons.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of San Joaquin held on the 4th day of June 2019, by the following vote, to wit:

____________________________________
Julia Hernandez, Mayor
City of San Joaquin

ATTEST:

I, Lupe Estrada, City Clerk of the City of San Joaquin, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a Regular Meeting of said Council, held at the San Joaquin Council Chambers on July 2, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____________________________________
Lupe Estrada, City Clerk
STAFF REPORT TO COUNCIL

May 7, 2019

TO: Mayor and Council

FROM: Elizabeth Nunez, City Manager

SUBJECT: Affordable Housing Density Bonus Ordinance Updates

Executive Summary

The City Council will consider amending sections 154.080, 154.081, 154.082, 154.083, 154.084, 154.085, 154.088, 154.092, 154.093, AND 154.094 relating to affordable housing density bonus procedures. The purpose of these amendments is to bring the City’s zoning code into conformity with recent State regulations to incentivize affordable housing. These amendments will provide additional options for approving and incentivizing affordable housing developments in the City.

These amendments have been determined to be exempt from the California Environmental Quality Act (CEQA) per section 15282.

Background

State Density Bonus Law

The State density bonus law was enacted in 1979, to encourage jurisdictions to offer density bonuses, incentives, and waivers to housing developments that include certain percentages of affordable units. Pursuant to this state law, the City of San Joaquin adopted an Inclusionary Housing Ordinance in 2000 that has not been updated since that date. Since adoption of the inclusionary onsite affordable housing requirement XX deed-restricted affordable housing units have been produced in market-rate buildings throughout the City. In 2016 and 2017, Governor Brown signed the following new legislation related to incentivizing the construction of affordable and market rate housing throughout California:

- Assembly Bill 2442 (Holden) – Allows a density bonus for development projects with transitional foster youth, disabled veteran, and homeless person units.
- Assembly Bill 2501 (Bloom) – Requires cities to implement procedures and timelines for processing density bonus applications.
- Assembly Bill 2556 (Nazarian) – Includes additional provisions for replacement of demolished affordable units as required by AB 2222.
- Assembly Bill 1934 (Santiago) – Allows commercial developers to partner with affordable housing developers whereby both would be eligible to receive certain incentives and concessions for their development projects.
- Assembly Bill 1505 (Bloom) – Allows jurisdictions to require new residential rental projects to reserve a percentage of the units for very low, low, or moderate income persons or families.
These new state laws and proposed revisions to the City’s inclusionary housing regulations are analyzed below. Additional proposed amendments to the City’s density bonus regulations, such as reduced parking requirements and the inclusion of key definitions, are also analyzed below. These revisions are included to address needed clarifications clean-up items to the affordable housing regulations and some state laws adopted prior to 2016.

Proposed Affordable Housing Density Bonus Ordinance Updates

This section of the memo presents the proposed revisions to Sections 154.080 through 154.100 Affordable Housing Density Bonus Procedures. Each new bill is described and analyzed and revisions to the various sections in the Zoning Code are analyzed below. The attached draft ordinance (Attachment 1) contains the exact proposed code amendment language.

Assembly Bill 2442 (Holden) – Transitional Foster Youth, Veterans, and Homeless Persons Units

AB 2442 allows a 20 percent density bonus for housing projects with at least 10 percent of total units reserved for transitional foster youth (transitional age youth), disabled veterans, or homeless persons. As required by this state law amendments are proposed to Sections 154.080 and 154.082, to include transitional foster youth housing as an allowable type of affordable housing for density bonuses and to add language stating that projects with 10% of this type of housing can be granted a 20 percent density bonus.

Assembly Bill 2501 (Bloom) – Affordable Housing Procedures; Rounding Up

AB 2501 requires local jurisdictions have proper procedures and timelines in place to facilitate expeditious processing of applications for multi-unit residential projects and commercial projects (partnered with affordable housing developers) that are requesting density bonuses. In conformance with this state law amendments are proposed to Sections 154.081, 154.082, and 154.093 to:

- Require density bonus applications to be processed at the same time as the land use application and by the review authority;
- Require that the developer submit all information about the requested density bonus, concessions and their justifications, and incentives at the time of application for the overall project; and
- Require that any density calculation, including base density and bonus density, that results in a fractional number, shall be rounded up to the next whole number.

Density Bonus Application Processing Improvements

Section 154.081 Processing Density Bonus Applications is proposed to be revised to address various provisions of AB 2501. This section of the proposed ZTA requires an affordable housing developer to submit as part of their application package a narrative explanation of how requested
concessions would result in identifiable and actual cost reductions for the project to offset the affordable housing costs. The purpose is to assist City staff, decision-makers and the public in better understanding all facets of the project. This information will also assist staff in the expeditious processing of the application.

**Density Bonus Calculations – Rounding Up**

AB 2501 requires that each component of any density bonus related calculation be rounded up. Any density calculation, including base density and bonus density that results in a fractional number shall be rounded up to the next whole number. Currently, 19.03.020.C requires all fractions to be rounded down when calculating the allowable number of residential units possible on a given site. The requirement has been included in Section 154.082.D to ensure that when calculating a density bonus all fractional numbers are rounded up to the next whole number. This requirement was also previously included in Section 154.093.

**Mixed-Use Commercial/Residential Projects**

AB 2501 also redefines a housing development to include mixed-use projects that include both housing and commercial uses. In response, revisions to Sections 154.080, 154.082.E and 154.082.G are proposed to include provisions for providing affordable housing within mixed-use commercial/residential projects and parking reductions where applicable.

**Assembly Bill 2556 (Nazarian) – Affordable Housing Replacement Guidance**

In 2014, the Legislature passed AB 2222, to ensure that housing units occupied by lower-income persons and households were not replaced with density bonus projects with fewer affordable units. Local jurisdictions had questions regarding how this bill should be implemented. Therefore, in 2016, the Legislature adopted AB 2556 providing further guidance related to calculating the replacement requirement when some or all units are vacant and the developer does not know the income levels of the residents.

To ensure that residential projects with affordable units that are demolished to create new housing are replaced in accordance with state law, Section 154.083 has been revised to include provisions for requiring the replacement of affordable units. In accordance with AB 2556 vacant units are either replaced in proportion to the number of known lower income households currently living in other units at the property.

**Assembly Bill 1934 (Santiago) – Commercial Project Bonus**

AB 1934 allows commercial developers to partner with affordable housing developers whereby both would be eligible to receive bonuses, concessions, and waivers for qualifying projects. In order to qualify for a development bonus, a commercial developer would need to partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households. Both projects would
need to be in the City of San Joaquin. One of the following incentives, which have been added to Section 154.082.I, would need to be mutually agreed upon by the applicant and review authority:

- Up to a 20-percent increase in maximum allowable intensity in the General Plan.
- Up to a 20-percent increase in maximum allowable floor area ratio.
- Up to a 20-percent increase in maximum height requirements.
- Up to a 20-percent reduction in minimum parking requirements.
- Use of a limited-use/application elevator for upper floor accessibility.
- An exception to a zoning ordinance or other land use regulation.

ADDITIONAL AFFORDABLE HOUSING ORDINANCE CLEAN-UP REVISIONS PER STATE LAW AND LOCAL ADMINISTRATIVE PROCEDURES

Additional “clean-up” revisions to the City’s affordable housing provisions based on conformity with state law (Government Code Section 65915) and to clarify the City’s affordable housing procedures are proposed in the draft ordinance. The additional proposed amendments are described and analyzed below.

Density Bonus for Inclusion of Child Care Facilities - Per State Law

In accordance with California Government Code Section 65915, a residential or mixed-use commercial/residential development that includes a child care facility or donates land for a child care facility is eligible for a density bonus. In response, Section 154.082.A, is included in the ZTA, which allows a 25 percent density bonus for housing projects with onsite child care facilities.

Parking Reductions for Affordable Housing Projects - Per State Law

Per state law, a text revision to Section 154.082.G is proposed to allow development projects qualifying for a density bonus by providing on-site affordable units relief from parking regulations. The reduced parking allowance of 0.5 parking spaces per bedroom would apply to a residential or mixed residential/commercial development that includes the required percentage of low, very low income, or includes a minimum 10 percent transitional foster youth, veteran or homeless persons units, or provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development.

Administrative Practice – Rental, Sale and Re-Sale of Affordable Units - Per State Law

A proposed text revision to the Section 154.088 preamble requires that any affordable unit provided to fulfill a requirement of the affordable housing provisions shall be reserved for and occupied by qualified households meeting the affordable income requirement specified for the unit in the Resolution of Approval, Agreement Imposing Restrictions and Real Property, and all other eligibility requirements for a minimum period of 55 years. Approval of this provision will bring the ordinance into conformance with state law.
Required Security Deposits and Pet Deposit - Per State Law

Proposed revisions to Section 154.088 require security deposits for affordable housing units to be in conformance with state law. The following deposits have been added to this section:

- A security deposit equal to the greater of one month’s rent or $500 can be required.
- A pet deposit may be in addition to, but cannot exceed 25-percent of the security deposit.

Limitations on Purchasers and Sale Prices - Per State Law

Text amendments to Section 154.088.B require that the sale and resale of affordable units constructed with a state density bonus must be in accordance with state law. Revisions to this section also state that all purchasers of affordable units shall meet the income range targeted for a particular unit.

Recommendation:

Staff recommends that the City Council introduce on first reading the following ordinance:

ORDINANCE NO. 2019-100

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN REPEALING SECTIONS 154.080 TO 154.100 AND ADDING SECTIONS 154.080 TO 154.100 RELATING TO AFFORDABLE HOUSING DENSITY BONUS, PROCEDURES.

THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN DOES ORDAIN AS FOLLOWS:

SECTION 1. Sections 154.080 to 154.100 of the San Joaquin Municipal Code are hereby repealed.

SECTION 2. Sections 154.080 to 154.100 are hereby added to the San Joaquin Municipal Code to read as follows:

§154.080 Purpose and Intent.
§154.081 Processing Density Bonus Applications.
§154.082 Affordable Housing Incentives.
§154.083 Replacement of Affordable Housing Units.
§154.084 Findings for Denial of Project.
§154.085 Reserved for Future Use.
§154.086 Affordable Housing Characteristics and General Requirements.
§154.087 Distribution of Density Bonus.
§154.088 Rental, Sale, and Re-Sale of Density Bonus Units.
§154.089 Density Bonus for Condominium Conversions.
§154.090 Development Proposals.
§154.091 Density Bonus Agreements.
§154.092 Reserved for Future Use.
§154.093 Calculating Affordable and Density Bonus Units.
§154.094 Term of Affordability.
§154.095 Rental Housing Units.
§154.096 Ownership Housing Units.
§154.097 Very Low Income Households.
§154.098 Low Income Households.
§154.099 Moderate Income Households.
§154.100 Senior Citizens; Low Income Senior Citizens and Very Low Income Senior Citizens.

§ 154.080 PURPOSE AND INTENT.

This affordable housing density bonus procedures and regulations provide incentives for the development of affordable housing units in conjunction with other residential, mixed-use projects, and commercial projects in partnership with affordable housing providers as provided under state law. The provisions are intended to implement general plan policies encouraging the production of affordable housing for all economic groups and including housing for disabled and older residents, transitional foster youth, disabled veterans, and homeless persons. The intent of the density bonus provisions is to contribute significantly to the
the economic feasibility of providing lower income housing in proposed developments, in compliance with Cal. Gov't Code §§ 65915 and 65917.

§ 154.081 PROCESSING DENSITY BONUS APPLICATIONS.

Density bonuses may be granted upon approval of a use permit by the reviewing authority, as specified by the §§ 154.250 through 154.260. The application for a density bonus and/or concessions shall be processed concurrently with the underlying land use permit and entitlement application. In addition to any other applicable application requirements, the application shall be made on a form supplied by the City and shall include:

(A) A description of the unit counts that make the project eligible for the requested density bonus;

(B) A request for the specific concessions being requested. The applicant shall provide an explanation of the regulatory concession and how it results in identifiable and actual cost reductions for the project to offset the affordable housing costs, or for rents for the targeted units as specified in Government Code Section 65915. The intent of this requirement is to provide reasonable documentation to establish eligibility for the concession or to demonstrate the concession meets the definition set forth in Section 65915. The explanation may be, but is not required to be, in narrative form;

(C) A request for any waiver or reduction of a development standard if compliance with a development standard would physically preclude construction of the project as proposed. The proposal shall include an explanation of how the development standard would physically preclude construction of the project as proposed; and

(D) A request for any reduction in parking ratios under Section 154.082(F) and an explanation for how the project is eligible for the requested reduction.

(E) Application for Density Bonus Housing Agreement. Once the land use permits, entitlements and any density bonus have been approved as described above, the applicant shall file an application, including the payment of any processing fees with the Housing Division for approval and finalization of the Agreement Imposing Restrictions on Real Property (Density Bonus Housing Agreement).

§ 154.082 AFFORDABLE HOUSING INCENTIVES.

This section provides density bonuses for specified housing projects and commercial projects where the developer of a commercial project has entered into an agreement for partnered housing with an affordable housing developer and provides affordable housing through a joint project or through two separate projects encompassing affordable housing. In order to encourage the construction of housing affordable to very low, low, and moderate income persons, transitional foster youth, disabled veterans, and homeless persons, and the replacement of residential rental units lost through new construction, density bonuses shall be allowed in compliance with this section.
STAFF REPORT TO COUNCIL

May 7, 2019

TO: Mayor and Council

FROM: Elizabeth Nunez, City Manager

SUBJECT: Accessory Dwelling Unit Ordinance

Executive Summary

The City Council will consider amending sections 154.002, 154.061, 154.063, 154.071, and 154.221 relating to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in residential zone districts.

Under California Public Resources Code (CPRC) Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city implementing the provisions of Section 65852.2 (accessory dwelling units) and 65852.22 (junior accessory dwelling units) of the Government Code, which are the State Accessory Dwelling Unit and Junior Accessory Dwelling Unit laws. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the state accessory dwelling unit law. A Notice of Exemption will be filed per Section 15062. Notice of Exemption.

Background

State Accessory Dwelling Unit and Junior Accessory Dwelling Unit Law

California is facing a state-wide housing crisis, with rising housing costs, and a shortage of affordable housing options. One solution to this crisis is to encourage accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) as a method of increasing the housing supply. Junior accessory dwelling units (JADUs) are ADUs that are no more than 500 square feet in size and are located within an existing single-family residence. ADUs are defined as a secondary dwelling unit with complete independent living facilities for one or more persons and generally take three forms:

- Detached: The accessory dwelling unit is separated from the primary structure
- Attached; the accessory dwelling unit is attached to the primary structure
- Repurposed Existing Space: Space (e.g. master bedroom) within the primary residence is converted into an accessory or junior accessory dwelling unit.

To facilitate this approach, state law related to ADUs was amended in September 2016 by the state legislature through adoption of AB 2299, SB 1069, and AB 2406 (JADUs) making significant changes to the way local municipalities are required to regulate such units. These laws were further refined through the adoption of AB 494 and SB 229 in 2017, and SB 1226 in 2019. The goal of these new regulations is to make it easier for single family residence owners to add ADUs, by making local zoning codes more permissive. The new state laws are now in
effect and supersede the City’s existing “second unit” ordinance until the City adopts its own “accessory dwelling unit” ordinance. The provisions of these state laws are summarized in the tables below.

**State Law - ADU Requirements**

<table>
<thead>
<tr>
<th>Topic</th>
<th>SB 1069/SB 229/AB 2299/AB 494 (Government Code Section 65852.2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing</td>
<td>Must be processed within 120 days of receiving application under a ministerial process</td>
</tr>
<tr>
<td>Floor Area</td>
<td>• Total area of an ADU shall not exceed 1,200 square feet or 50% of the existing floor area of the existing or proposed primary residence.</td>
</tr>
<tr>
<td>Allowed Zones</td>
<td>The lot is zoned for single family or multi-family use</td>
</tr>
<tr>
<td>Location</td>
<td>Existing or newly constructed single-family residence</td>
</tr>
<tr>
<td>Access to ADU</td>
<td>• ADU within an existing single residential unit or accessory structure require independent exterior access</td>
</tr>
<tr>
<td>Setbacks</td>
<td>• No setback shall be required for a legally permitted existing garage or other accessory building that is converted to an ADU</td>
</tr>
<tr>
<td></td>
<td>• If an ADU is constructed above a new or existing garage, a setback of no more than 5 feet is required from interior lot lines</td>
</tr>
<tr>
<td>Parking Exceptions</td>
<td>A local government cannot impose parking standards for an ADU if:</td>
</tr>
<tr>
<td></td>
<td>• ADU is within ½ mile of public transit;</td>
</tr>
<tr>
<td></td>
<td>• ADU is located within an historic or architecturally significant district;</td>
</tr>
<tr>
<td></td>
<td>• ADU is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building;</td>
</tr>
<tr>
<td></td>
<td>• ADU is in a Permit Parking Area where on-street parking permits are required but not offered to the occupant(s) of the ADU; or</td>
</tr>
<tr>
<td></td>
<td>• When there is a carshare vehicle located within a walking distance (approximately 1 block) of the ADU.</td>
</tr>
<tr>
<td>Parking Location</td>
<td>• If parking is required, it shall not exceed one space per ADU or bedroom</td>
</tr>
<tr>
<td></td>
<td>• Off-street parking may be permitted in setback areas in locations determined by the City or in a tandem configuration, unless specific findings are made that it is not feasible or permitted anywhere else in the City</td>
</tr>
<tr>
<td></td>
<td>• If existing parking is demolished in conjunction with the ADU and off-street parking is required by the City, the replacement parking may be configured as covered or uncovered, in a tandem configuration, or in a mechanical lift</td>
</tr>
<tr>
<td>Utility Fee Requirements</td>
<td>ADUs within the existing space of a single-family residence or accessory structure shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service. Other ADUs may require new or separate utility connections and may be subject to a connection fee or capacity charge that shall be proportionate to the ADU size or number of plumbing fixtures.</td>
</tr>
<tr>
<td>Fire Sprinklers</td>
<td>Not required if not required for primary residence</td>
</tr>
<tr>
<td>Topic</td>
<td>SB 1069/SB 229/AB 2299/AB 494 (Government Code Section 65852.2)</td>
</tr>
<tr>
<td>-------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Sale/Rental Restriction</td>
<td>May not be sold separately from primary residence. May require owner occupancy of the main residence or ADU</td>
</tr>
</tbody>
</table>

**State Law JADU Requirements**

<table>
<thead>
<tr>
<th>Topic</th>
<th>AB 2406 (Government Code Section 65852.22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing</td>
<td>Must be processed within 120 days of receiving application under a ministerial review process</td>
</tr>
<tr>
<td>Floor Area</td>
<td>Total area of a JADU shall not exceed 500 square feet</td>
</tr>
<tr>
<td>Allowed Zones</td>
<td>The lot is zoned for single family or multi-family use</td>
</tr>
<tr>
<td>Location</td>
<td>Inside the walls of an existing or newly constructed single-family residence</td>
</tr>
<tr>
<td>Bathroom</td>
<td>May be separate or shared with main residence</td>
</tr>
<tr>
<td>Kitchen</td>
<td>Must have a sink and cooking facility and cooking preparation area</td>
</tr>
<tr>
<td>Access to JADU</td>
<td>Permitted from inside the main residence</td>
</tr>
<tr>
<td>Parking</td>
<td>Access from outside the main residence is also required</td>
</tr>
<tr>
<td>Exceptions</td>
<td>No parking shall be required</td>
</tr>
<tr>
<td>Utility Fee Requirements</td>
<td>JADUs are located within the existing space of a single-family residence and shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.</td>
</tr>
<tr>
<td>Fire Sprinklers</td>
<td>Not required if not required for primary residence</td>
</tr>
<tr>
<td>Sale/Rental Restriction</td>
<td>May not be sold separately from the residence. Owner occupancy is required.</td>
</tr>
</tbody>
</table>

These state laws allow local governments to take a variety of actions beyond these statutes that promote ADUs. This can be accomplished through the adoption of a local ordinance that imposes additional development standards provided they do not overly burden the overall development of ADUs. For instance, the City can impose reasonable development standards that further regulate height, lot coverage, lot size, and maximum unit size, as it would for any land use – but it cannot regulate to the point where it would defeat the state law and discourage the creation of ADUs as additional housing stock for the region.

**Proposed Accessory Dwelling Unit and Junior Accessory Dwelling Unit Ordinance**

The proposed accessory dwelling unit and junior accessory dwelling unit ordinance meets state law requirements and is tailored to be compatible with the City of San Joaquin Municipal Code. The highlights of the proposed ordinance are summarized below.

- **Allowed Zones** - In accordance with state law, the proposed ordinance allows one ADU or JADU on any R-1, R-2, and R-3 that contain an existing or proposed single family residence. Any residential zoned lot that currently consists of two residential units will not be permitted to construct an additional accessory dwelling unit. However, if one of
the units was constructed without permits (i.e. garage conversion); the owner may apply to make the illegally constructed unit into a legal accessory dwelling unit if all required provisions for ADUs or JADUs in the proposed ordinance are met.

- **ADU Requirements:**
  - The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area of the primary single-family residence, with a maximum increase in floor area of 1,200 square feet. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 feet.
  - Must be architecturally compatible with the main dwelling unit and garage.
  - Shall conform to the height, open space, lot coverage, and setback requirements of the R-1, R-2, and R-3 zones along with other requirements of the zoning code and other applicable city codes.
  - Must contain separate kitchen and bathroom facilities.
  - May be allowed in an existing garage converted to an accessory dwelling unit or junior accessory dwelling unit that does not meet current setback requirements provided that the loss of parking is replaced in any lawful configuration on the site.
  - No fire sprinklers shall be required unless they are required for the primary residence.
  - Parking requirements for accessory dwelling units shall not exceed one parking space per unit. The parking space may be provided as tandem parking, including on an existing driveway or in a setback area, excluding the non-driveway front yard setback.
  - When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the replacement spaces may be in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces. Tandem spaces may consist of 2 or more vehicles lined up one behind the other.
  - Parking is not required in the following instances:
    - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.
    - The accessory dwelling unit is located within an architecturally or historically significant historic district.
    - An accessory dwelling unit that is part of the proposed existing primary residence or accessory structure.
    - When there is a car share vehicle located within one block of the accessory dwelling unit.

- **JADU Requirements:**
  - Be constructed or designated within the existing walls of the existing single-family dwelling and require inclusion of an existing sleeping quarter and shall be no greater than 500 square feet in size.
Include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

Include an efficiency kitchen, which shall include all the following: a sink with a maximum waste line diameter of 1.5 inches, a cooking facility with appliances that do not require electrical service greater than 120 volts, or natural, or propane gas, a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.

The single-family dwelling in which the junior accessory dwelling unit may be permitted must be owner-occupied. A covenant to this effect shall be recorded with the County Recorder’s Office in a form acceptable to the City Attorney.

No parking shall be required for a junior accessory dwelling unit.

- Rental/Sale Restrictions:
  - Either the primary or accessory dwelling secondary unit may be for rental purposes and neither unit may be sold separately.
  - A rental agreement for an accessory dwelling unit or junior accessory dwelling unit shall be for a minimum of 30-days.

- Lot Size Restriction:
  - No application shall be considered for junior accessory dwelling unit or accessory dwelling unit on any lot less than 5,000 square feet in area.

- Utility Fees - A new or separate utility connection directly between the accessory dwelling unit or junior accessory dwelling unit and the utility or a related connection fee or capacity charge shall not be required.

Recommendation:

Staff recommends that the City Council introduce on first reading the following ordinance:

As provided by State law projects may apply for housing density bonuses up to a maximum of 35 percent. Density bonuses shall be subject to the following:

(A) Density Bonuses Permitted. Density bonuses are only permitted in projects of 5 or more units. The amount of density bonus granted shall be based on the following table:

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Minimum % of Units</th>
<th>Density Bonus Granted</th>
<th>Additional Bonus for each 1% Increase in Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Low Income</td>
<td>5%</td>
<td>20%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Low Income</td>
<td>10%</td>
<td>20%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Moderate Income</td>
<td>10%</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td>Transitional foster youth, disabled veterans, or homeless persons units (provided at the same affordability level as very low income units)</td>
<td>10%</td>
<td>20% (of the same type of unit giving rise to the density bonus)</td>
<td>N/A</td>
</tr>
<tr>
<td>Senior Citizen Units</td>
<td>50% of its units for senior citizens, and at least 10% of its units for very low income senior citizens, or at least 20% of its units for low income senior citizens</td>
<td>25%</td>
<td>N/A</td>
</tr>
<tr>
<td>Provision of a Child Care Center</td>
<td>N/A</td>
<td>25%</td>
<td>N/A</td>
</tr>
<tr>
<td>Land donation</td>
<td>N/A</td>
<td>15%</td>
<td>1% increase for each above 10% affordable units provided on the donated land</td>
</tr>
</tbody>
</table>
(B) For a land donation the following provisions shall apply:

1. The applicant donates and transfers land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

2. The developable acreage and zoning classification of the land being transferred are sufficient to permit the construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

3. The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 residential units, has the appropriate general plan and zoning designation, and is or will be served by adequate public facilities and infrastructure.

4. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units.

5. The land is transferred to the local agency or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

6. The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(C) For the purposes of calculating the permitted housing bonus in residential zones, "density" shall refer to the maximum allowable residential density per square foot of site area permitted in the zone in which the project is located. The density bonus may result in more market rate units than would otherwise be permitted by the zone.

(D) Any density calculation, including base density and bonus density that results in a fractional number shall be separately rounded up to the next whole number.

(E) Concessions. In compliance with state law, projects that request a density bonus to provide on-site affordable housing (and commercial projects that partner with affordable housing developers and provide at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low income households authorized by Government Code 65915.7 as set forth in 19.20.020.B.3) are eligible for concessions as follows. The number of available concessions may be combined from different categories below for a maximum of three concessions per project.

///

///

///
(1) Number of Concessions.

<table>
<thead>
<tr>
<th>Percentage of Affordable Units</th>
<th>Number Concessions Permitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>5% Very Low, 10% Low, or 10% Moderate</td>
<td>1</td>
</tr>
<tr>
<td>10% Very Low, 20% Low, or 20% Moderate</td>
<td>2</td>
</tr>
<tr>
<td>15% Very Low, 30% Low, or 30% Moderate</td>
<td>3</td>
</tr>
</tbody>
</table>

(2) Available Residential Concessions. The following concessions may be requested:

a. 10% reduction in the minimum rear yard setback; or
b. 10% reduction in the minimum front yard setback; or
c. 10% reduction in the minimum side yard setback; or
d. 10% reduction in common open space required; or
e. An additional story, not to exceed 10 feet of the total project height, or other regulatory concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the affordable units as specified in Government Code Section 65915.

(F) Concession may be denied by the City Council if one of the following findings can be made, based on substantial evidence:

(1) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the targeted units to be set as specified in Section 65915 of the California Government Code;

(2) The concession would have a specific adverse impact, as defined in Section 65915 of the California Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households; or

(3) The concession would be contrary to state or federal law.

(G) Parking Incentives. Density bonus housing development shall be granted the following parking space requirements when requested by the developer, inclusive of handicapped, which shall be granted to all units in the development:

///

///
<table>
<thead>
<tr>
<th>Number of Bedrooms</th>
<th>Required Parking Spaces per Unit**</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 1 bedroom</td>
<td>1</td>
</tr>
<tr>
<td>2 to 3 bedrooms</td>
<td>2</td>
</tr>
<tr>
<td>4 or more bedrooms</td>
<td>2.5</td>
</tr>
</tbody>
</table>

* If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. A development project may provide on-site parking through a tandem and/or uncovered parking configuration.

** If a residential or mixed residential/commercial development project includes the required percentage of low, very low income, or includes a minimum 10 percent transitional foster youth, veteran, or homeless persons units, or provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development and is located within one-half mile of a major transit stop where there is unobstructed access to a major transit stop from the development, then, upon the request of the developer, a parking ratio not to exceed 0.5 spaces per bedroom shall apply to the residential portion of the development.

(H) Guest parking shall not be required for projects utilizing the affordable housing density bonus provided in this section.

(I) Available Commercial Concessions. In addition to the other bonus and residential concessions provided in this Chapter, commercial development projects that partner with affordable housing developers and provide at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low income households in accordance with Government Code Section 65915.7 are eligible for the following that is mutually agreed upon by the applicant and review authority:

1. Up to a 20-percent increase in maximum allowable intensity in the General Plan.
2. Up to a 20-percent increase in maximum allowable floor area ratio.
3. Up to a 20-percent increase in maximum height requirements.
4. Up to a 20-percent reduction in minimum parking requirements.
5. Use of a limited-use/application elevator for upper floor accessibility.
6. An exception to a zoning ordinance or other land use regulation.
§ 154.083 REPLACEMENT OF AFFORDABLE HOUSING UNITS.

A project that vacates or demolishes (1) rental units subject to affordability restrictions that restrict rents to levels affordable to persons or families of low or very low income, or (2) units occupied by low or low income households within the five year period preceding the development application unless households within the five year period preceding the development application shall replace these units in the following manner:

(A) If any dwelling units are occupied on the date of application, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.

(B) For unoccupied dwelling units in a development with occupied units, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy.

(C) If any dwelling units have been vacated or demolished within the five-year period preceding the application, the proposed project shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.

(D) If the income category of the last household in occupancy, or of the persons or families in occupancy at the highpoint, is not known, it shall be presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

(E) The affordable replacement units shall be subject to a recorded affordability restriction.

(F) The affordable replacement units shall be counted towards the affordable units provided for purposes of calculating the density bonus.

(G) “Equivalent size” means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

§ 154.084 FINDINGS FOR DENIAL OF PROJECT.

(A) Notwithstanding § 154.083, the city shall deny the proposed development if either of the following findings are made:

(1) The proposed development does not conform to the applicable zoning and development policies, other than density.
(2) The proposed development would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified.

(B) The above findings shall be made in addition to findings made under other sections of the Municipal Code.

§ 154.085 RESERVED FOR FUTURE USE.

§ 154.086 AFFORDABLE HOUSING UNIT CHARACTERISTICS AND GENERAL REQUIREMENTS.

(A) All affordable housing units shall have an appearance, bedroom mix, and amenities representative of the entire housing development.

(B) The affordable units shall not be concentrated in one specific area of a project, but rather shall be evenly distributed throughout a project on a single parcel or within a single type of housing development.

(C) None of the target units in the development will at any time be utilized on a transient basis, nor will they ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, or rest home.

(D) Long-term maintenance provisions for the development shall be required in conjunction with the project approval and the development agreement.

(E) All affordable housing projects of 16 or more units shall provide an on-site manager for the purpose of security and maintenance.

§ 154.087 DISTRIBUTION OF DENSITY BONUS UNITS.

(A) Development proposals for the two sections of the proposed development are approved concurrently.

(B) The housing units in both sections are developed concurrently.

(C) The distribution of affordable units shall comply with §154.086(B).

§ 154.088 RENTAL, SALE, AND RE-SALE OF AFFORDABLE HOUSING UNITS.

Any affordable unit provided to fulfill a requirement of this Chapter shall be reserved for and occupied by qualified households meeting the affordable income requirement specified for the unit in the Resolution of Approval, Agreement Imposing Restrictions on Real Property, and all other eligibility requirements for a minimum period of 55 years. Eligibility requirements and a rental and sales price schedule for very low, low, and moderate income households shall be established annually by City Council resolution. Newly constructed inclusionary units shall first be offered to eligible households displaced by the demolition necessary to construct the project.
(A) Rental of Units

(1) If units are offered for rent, the project owner or developer shall rent the units directly to the required number of very low, low, and moderate-income households at the rental rate established by City Council resolution.

(2) The rental rate shall include charges for the unit, pets, water, trash, and building amenities, unless otherwise specified in the resolution of approval.

(3) A security deposit equal to the greater of one month’s rent or $500 can be required.

(4) A pet deposit may be in addition to, but cannot exceed 25-percent of the security deposit.

(B) Limitations on Purchasers and Sale Prices.

(1) The sale and resale of affordable units constructed for purposes of using a state density bonus under 19.22.050.D above shall be in accordance with California Government Code 65915(c)(2).

(2) All purchasers of inclusionary units shall meet the city’s income guidelines for the income range targeted for that unit. Proof of income eligibility shall be submitted to the Director. Resale of units shall require that the Director first verify the purchaser as very low, low or moderate income. This requirement shall be included in the recorded covenant.

(3) Newly constructed inclusionary units shall first be offered to eligible very low, low and moderate income households displaced by the demolition necessary to construct the project.

(4) The offer shall be made to other very low, low, or moderate displaced households.

(5) The remaining units, and all other newly constructed units and any inclusionary units in a building undergoing conversion to common interest development, shall be offered to very low, low, and moderate income households.

(6) Lower income units shall be sold at a price that is no more than two and one-half times 65 percent of the City’s median income. Qualifying income levels shall be established annually by the City Council.

(7) Moderate income units shall be sold at a price that is no more than two and one-half times (2.5 times) the City’s median income. Qualifying income levels shall be established annually by the City Council.

(8) The sales price of the affordable unit is dependent on the unit size established annually by the City Council.
(9) Expected homeowners’ association fees shall be included in the calculation of total unit costs.

(C) Resale of Units. Upon resale, the affordable units shall remain affordable for the targeted income group. The resale price shall be set as follows:

(1) Total costs, including expected homeowners association fees.

(2) Lower income units: a total cost of no more than two and one-half times 65% of the City’s median income for low income households.

(3) Moderate income units: a total cost of no more than two and one-half times 65 percent of the City’s median income for moderate income households.

(4) The sales price of the affordable unit is dependent on unit size.

§ 154.089 DENSITY BONUS FOR CONDOMINIUM CONVERSIONS.

As a part of this request for a density bonus or other concessions or incentives, the developer shall demonstrate that waiver or modification of development and zoning standards which would otherwise inhibit the proposed development is necessary to make the housing unit economically feasible.

(A) In accordance with Cal. Gov't Code § 65915.5, when an applicant proposing to convert apartments to a condominium project agrees to provide 33% of the total units in the proposed condominium project for moderate income households, as defined in § 154.099, or 15% of the total units for low income households, as defined in § 154.098, and agrees to pay a reasonable administrative cost, then the city shall grant a 25% density bonus.

(B) For purposes of this section DENSITY BONUS means an increase of up to 35% over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(C) An applicant may submit a preliminary proposal for a condominium conversion under the provisions of § 154.090.

(D) Notwithstanding division (A) above, the city may deny the condominium conversion under the provisions of § 154.084.

(E) An applicant shall be ineligible for a density bonus under the provisions of this section if the apartments proposed for conversion were previously granted a density bonus under the provisions of § 154.083.

§ 154.090 DEVELOPMENT PROPOSALS.

(A) A developer may submit a preliminary proposal for a density bonus prior to a formal application. The city shall respond within 90 days of receipt of a written proposal, notifying the developer in writing of the procedures, which will be followed in processing the application.
(B) The developer shall provide detailed engineering studies to the satisfaction of the City Engineer to demonstrate that an adequate circulation system and service and utility capacity is available for the increased density requested.

§ 154.091 DENSITY BONUS AGREEMENTS.

Any developer requesting a density bonus shall submit a density bonus agreement in a form approved by the City Attorney. The density bonus agreement shall be approved by the City Council, and shall run with the land. It may include, but not be limited to, the following provisions:

(A) The number of requested housing units above the amount allowed by the existing zoning, and the additional incentives requested;

(B) The number of affordable units to be provided in the project by number of bedrooms and income group;

(C) The term of affordability for affordable units, as defined in § 154.094;

(D) The standards for maximum qualifying incomes for affordable units;

(E) The standards for maximum rents or sales prices for affordable units;

(F) The process to be used to certify tenant/homeowner incomes;

(G) The arrangements by either the city or the Housing Authority for monitoring of the affordable units;

(H) How vacancies will be marketed and filled;

(I) Restrictions and enforcement mechanisms binding on property upon sale or transfer;

(J) Penalties and enforcement mechanisms in event of failure to maintain affordability provisions;

(K) Any other provisions deemed necessary by the city.

§ 154.092 RESERVED FOR FUTURE USE.

§ 154.093 CALCULATING AFFORDABLE AND DENSITY BONUS UNITS.

In calculating the additional density bonus units to be allowed over what is allowed by the existing zoning, or the number of affordable housing units to be required, any resulting fraction of a unit shall be rounded up to the next whole number. In calculating the number of affordable units required under § 154.082(A), the density bonus units shall not be included.
§ 154.094 TERM OF AFFORDABILITY.

If a density bonus is granted, then affordability of the approved very low, low, or moderate income bonus units shall be maintained for a period of 55 years.

§ 154.095 RENTAL HOUSING UNITS.

(A) Rents for those units in a rental housing development designated for very low income households or very low income senior citizens shall not exceed 30% of 50% of the monthly area median income, as published annually by the State Department of Housing and Community Development in Cal. Code of Regulations, Title 25 and adjusted for household size. If the units are rented to Section 8 certificate holders, then the maximum rents for those units shall be as determined by the Housing Authority.

(B) Rents for units designated for low income households or low income senior citizens shall not exceed 30% of 60% of the monthly area median income, as published annually by the State Department of Housing and Community Development in Cal. Code of Regulations, Title 25 and adjusted for household size. If the units are rented to Section 8 certificate holders, then the maximum rents for those units shall be as determined by the Housing Authority.

(C) In calculating rents for senior citizen housing units, any services such as meals or individual medical care, offered above those normally provided for independent living units, shall be optional, and shall not be included in calculating maximum rents.

(D) Household size.

(1) The following table shall be used in determining the household size for setting the maximum rents, and in determining the maximum occupancy for units:

<table>
<thead>
<tr>
<th>Household Size</th>
<th>For Maximum Number of Persons</th>
<th>Occupancy Limit – Number of Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Size – Number of Bedrooms</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Studio</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
<td>9</td>
</tr>
</tbody>
</table>

(2) An exception to the above table shall be made for units designated for senior citizens. The exception is that a household size of one for the purpose of setting maximum rents shall be assumed for a single bedroom unit. The occupancy limit shall remain at three.
(E) Total move-in costs for affordable units shall be limited to the first and last month's rent plus a cleaning deposit not to exceed one month's rent.

§ 154.096 OWNERSHIP HOUSING UNITS.

(A) The total mortgage payments for those units in a home ownership housing development designated for very low income households or low income households shall not exceed the criteria specified for maximum rents in § 154.095. Total mortgage payments include principal, interest, taxes, insurance, assessment district fees, and homeowner association fees, if applicable.

(B) The total down payment, excluding closing costs, for the affordable units, shall not exceed 10% of the purchase price.

(C) The provisions of this section shall be included in the density bonus agreement, and shall run with the land for the term of affordability.

§ 154.097 VERY LOW INCOME HOUSEHOLDS.

Very low income households are households whose income does not exceed 50% of area median income, as defined in Cal. Health and Safety Code § 50105.

§ 154.098 LOW INCOME HOUSEHOLDS.

Low-income households are households whose income does not exceed 80% of area median income, as defined in Cal. Health and Safety Code § 50079.5.

§ 154.099 MODERATE INCOME HOUSEHOLDS.

Moderate-income households are households whose income does not exceed 120% of area median income, as defined in Cal. Health and Safety Code § 50093.

§ 154.100 SENIOR CITIZENS; LOW INCOME SENIOR CITIZENS, AND VERY LOW INCOME SENIOR CITIZENS.

(A) Senior citizens are persons of at least 62 years of age (or 55 years of age if the project is at least 150 dwelling units), as defined in Cal. Civ. Code § 51.2.

(B) Low income senior citizens are senior citizens whose income does not exceed 80% of area median income, as defined in Cal. Health and Safety Code § 50079.5.

(C) Very low income senior citizens are senior citizens whose household income does not exceed 50% of area median income, as defined in Cal. Health and Safety Code § 50105.

SECTION 3. CEQA. The proposed zone text amendment is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the
activity is not subject to CEQA. Affordable housing developments will be required to meet all local, state, and federal health and safety regulations to ensure that there are no significant environmental impacts and will be subject to further CEQA review in accordance with the accompanying discretionary permit approval. These revisions implement the requirements of state law and the City's inclusionary housing program and do not change the physical characteristics of the projects themselves.”

SECTION 4. Effective Date. This ordinance shall become effective thirty days after its adoption.

SECTION 5. Publication. Upon passage, this ordinance or a summary of the same shall be published within fifteen (15) days of passage, pursuant to the laws of the State of California, in the San Joaquin news, a newspaper of general circulation published and circulated in said City of San Joaquin. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of San Joaquin held on ____________, 2019, and was passed and adopted at a regular meeting of the City Council held on ____________, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: APPROVED:

__________________________
Lupe Estrada, Deputy City Clerk    ____________________________
Mayor, City of San Joaquin
ORDINANCE NO. 2019-101

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN AMENDING SECTIONS 154.002, 154.061, 154.063, 154.071, 154.221 OF THE SAN JOAQUIN MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS IN RESIDENTIAL ZONE DISTRICTS.

THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 154.002 of the San Joaquin Municipal Code is hereby amended to read as follows:

§ 154.002 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING. Part of the main building or a detached subordinate building located on the same lot or building site, the use of which is customarily incidental to that of the main building or to the main use of the land. Where a substantial part of the wall of an accessory building is a part of the main building, or where an accessory building is attached to the main building in a substantial manner by a roof, such accessory building shall be counted as part of the main building.

ACCESSORY DWELLING UNIT. An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residence (single family dwelling unit) is situated. An accessory dwelling unit also includes: (1) an efficiency unit, as defined in section 17958.1 of the Health and Safety Code; or (2) an efficiency unit, as defined in section 18007 of the Health and Safety Code.

ACCESSORY USE. A use naturally and normally incidental to, subordinate to, and devoted exclusively to the principal use of the premises.

ALLEY. A public thoroughfare or way not less than ten feet nor more than 20 feet in width, serving as a secondary means of access to abutting property, and which has been deeded or dedicated to the city.

APARTMENT. A room or suite of two or more rooms in a multiple dwelling occupied or suitable for occupancy as a residence for one family.

APARTMENT HOUSE. See DWELLING, MULTIPLE.

AUTOMOBILE COURT. A group of two or more attached, detached, or semi-detached buildings containing individual sleeping or living units designed for or used primarily for the accommodation of transient automobile travelers, with garage attached or
parking space conveniently located to each unit, including tourist courts, motels, or motor lodges.

**BOARDING HOUSE.** A dwelling other than a hotel where lodging and/or meals for three or more persons are provided for compensation. **COMPENSATION** shall include compensation in money, services, or other things of value.

**BILLBOARD.** Any sign containing advertising, not appurtenant to any permitted use, over six square feet in area.

**BUILDING.** Any structure having a roof supported by columns or by walls and designed for the housing or enclosure of any person, animal, or chattel.

**BUILDING, HEIGHT OF.** The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building to the topmost point of the roof.

**BUILDING, MAIN.** A building in which is conducted the principal use of the lot on which it is situated. In any R zone, any dwelling shall be deemed to be a main building on the lot on which the same is situated.

**BUILDING SITE.** See LOT.

**CAMP, TRAILER.** Any area or tract of land used or designed to accommodate ten or more automobile trailers or ten or more camping parties, including cabins, tents, or other camping outfits.

**CARPORT.** See GARAGE, PRIVATE.

**CHURCH.** Includes, but shall not necessarily be confined to, any building, structure or open space where a group of two or more persons, not immediate members of one family only, regularly gather for purposes of divine worship.

**CITY.** The City of San Joaquin.

**CLUB.** An association of persons for some common nonprofit purpose, but not including groups organized primarily to render a service which is customarily carried on as a business.

**COMMISSION.** The Planning Commission of the City of San Joaquin.

**DUPLEX.** A building containing not more than two kitchens, designed and/or used to house not more than two families, living independently of each other, including all necessary employees of each family.

**DWELLING.** A building or portion thereof designed exclusively for residential occupancy, including one-family, two-family, and multiple dwellings, but not including hotels, clubs, or boarding houses or any institution such as an asylum, hospital, or jail where human beings are housed by reason of illness or under legal restraint.
**DWELLING, MULTIPLE.** A building, or portion thereof, used, designed, or intended as a residence for three or more families living independently of each other, and doing their own cooking in the building, including apartment houses, apartment hotels and flats, but not including automobile courts.

**DWELLING, ONE-FAMILY.** A building designed and/or used exclusively for occupancy by one family, living independently of any other family.

**DWELLING, TWO-FAMILY.** A building designed and/or used exclusively for occupancy by two families, living independently of each other. (See also **DUPLEX**).

**DWELLING GROUPS.** One or more buildings containing dwelling units occupying a parcel of land, in one ownership, and arranged around a yard or court, including one-family, two-family, and multiple dwellings, but not including automobile courts.

**DWELLING UNIT.** Two or more rooms in a dwelling or an apartment hotel designed for occupancy by one family for living and sleeping purposes and having only one kitchen.

**EMERGENCY HOUSING.** Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

**ERECTED.** Shall include built, built upon, added to, altered, constructed, reconstructed, moved upon, or any physical operation upon the land required for a building.

**FAMILY.** One or more persons living as a single housekeeping unit in a dwelling unit, including necessary domestic servants. **FAMILY** shall not include such groups as customarily occupy a hotel, club, fraternity, or sorority house.

**FAMILY CARE HOME.** A state-authorized, certified or licensed foster home or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children on a 24 hours a day basis. Pursuant to Cal. Welfare and Institutions Code § 5116 or as hereafter amended, such homes shall be a permitted use in all residential zones.

**FENCE, OPEN OR LATTICE TYPE.** A fence 50% or more of the surface of which is open to the passage of air.

**GARAGE, PRIVATE.** A detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises.

**GARAGE, PUBLIC.** A building used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire, or sale.

**GARAGE SPACE.** Permanently maintained covered space of not less than 8 x 19 feet for the parking of automobiles off the street. Such space shall be located and arranged for an accessory building and with adequate ingress and egress.
HOME OCCUPATION. The conduct of an art or profession, the offering of a service, or the conduct of a business, or the handcraft manufacture of products within a house or garage in a residential district, which use is clearly incidental and secondary to the use of a structure for dwelling purposes and which use does not:

(1) Alter, finish or decorate the dwelling structure externally in such a manner as to change the residential character and appearance of the dwelling;

(2) Display sign on the premises; or

(3) Unreasonably interfere with the quiet enjoyment of the occupant on neighboring property.

HOTEL. Any building, or portion thereof, containing six or more guest rooms used, designed, or intended to be used, let, or hired out to be occupied or which are occupied as the more or less temporary abiding place of six or more individuals who are lodged with or without meals for compensation, whether the compensation for hire is paid directly or indirectly, and in which no provision is made for cooking in any individual room or suite.

JUNIOR ACCESSORY DWELLING UNIT. A unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure and may include separate sanitation facilities or may share sanitation facilities with the existing structure. For the purposes of providing service for water, sewer, or power, or for fire or life protection, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

LIVING AREA. The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

LOADING SPACE. A permanently maintained space of not less than 8 x 18 feet located off the street with access for the parking, loading and unloading of vehicles. Whenever the provisions of this chapter shall require loading space, such space shall be in addition to any required parking space and/or garage space.

LODGE. An order or society of persons organized for some common non-profit purpose, but not including groups organized primarily to render a service which is customarily carried on as a business.

LOT. Any area or parcel of land held under separate ownership and occupied, or to be occupied, by a main building or by a dwelling group, together with such yards, open spaces, lot width, and lot area as are required by this chapter and having its principal frontage on a public street, road, or highway.

LOT, CORNER. A lot situated at the intersection of two or more intersecting streets.

LOT, CUL-DE-SAC. A lot with at least half of its frontage abutting a cul-de-sac.

LOT, INTERIOR. A lot other than a corner lot.
LOT, KEY. The first lot to the rear of a reversed corner lot, whether or not separated by an alley.

LOT, REVERSED CORNER. A corner lot which rears upon the side of another lot, whether separated by an alley or not.

LOT, THROUGH. A lot having frontage on two parallel or approximately parallel streets.

LOT DEPTH. The horizontal distance between the front and rear lot lines, measured in the mean direction of the side lot lines.

LOT LINE. The lines bounding a lot.

LOT LINE, FRONT. The property line dividing a lot from a street. On a corner lot the shorter street frontage shall be considered the front lot line.

LOT LINE, REAR. The line opposite the front lot line.

LOT LINE, SIDE. Lot lines other than front lot lines or rear lot lines.

LOT WIDTH. The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

MOBILE HOME PARK. An area or tract of land where one or more mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation.

NONCONFORMING BUILDING. A building or structure or portion thereof lawfully existing prior and prior to passage of an ordinance affecting that use, which was designed, erected, or structurally altered for a use that does not conform to the use regulations of the zone in which it is located, or a building or structure that does not conform to all the height or area regulations of the zone in which it is located.

NONCONFORMING USE. A use which lawfully occupied a building or land prior to passage of an ordinance affecting that use, and which does not conform with the use regulations of the zone in which it is located.

OPEN SPACE. As required in the R and PD zones shall mean area available and accessible to residents for active and passive recreation including landscaped areas, walkways, patios, yards, and recreation facilities. To qualify as open space, an area must have a minimum dimension of ten feet except that balcony may qualify as open space when the minimum dimension is five feet. Parking areas (spaces and driveways) may not be included in open space calculations.

OWNER-OCCUPANT. A resident of a property who is also the owner of that property.

PARKING SPACE. Permanently maintained space at least 9 x 20 feet located off the street with access for the parking of automobiles.
PASSAGEWAY. A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

PRIMARY RESIDENCE. A structure that contains the largest or main dwelling on the lot.

PROFESSIONAL OFFICES. An office for the conduct of any one of the following uses: accountant, architect, attorney, chiropractor, civil engineer or surveyor's drafting office, collection agency, cosmetologist, dentist, doctor, funeral parlor, insurance, private detective, real estate, social worker or similar use; but shall not include the following uses: advertiser, barber shop, contractor, pest control, pharmacy, or veterinary.

ROOMING HOUSE. See BOARDING HOUSE.

SCHOOL, ELEMENTARY OR HIGH. An institution of learning which offers instruction in several branches of study required to be taught in the public schools by the Education Code of the State of California. The term shall include junior high school.

STREET. A public thoroughfare or road easement not less than 20 feet in width, which affords principal means of access to abutting property, but not including an alley.

STREET LINE. The boundary between a street and property.

STREET SIDE. A street bounding a corner lot, adjacent to a side line of the lot.

STRUCTURAL ALTERATIONS. Any change in the supporting members of a building, such as bearing walls, columns, beams, girders, floor joists, or roof joists, for which a building permit is required.

STRUCTURE. Anything constructed or erected, the use of which requires more or less permanent location on or in the ground or attachment to something having a permanent location on or in the ground, including but not limited to: site built swimming pools, gazebos, carports, patio covers. This definition does not include walls and fences less than three feet six inches in height when located in front yards or less than six feet in height when located in side or rear yards, nor other improvements of a minor character.

SUPPORTIVE HOUSING. Housing with no limit on length of stay, that is occupied by the target population and that is linked to on-site or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Uses meeting this definition shall be permitted, conditionally permitted, or prohibited as similar uses in the same zone.

TARGET POPULATION. Persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with § 4500) of the Cal. Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the
foster care system, individuals exiting from institutional settings, veterans, and homeless people.

**TRANSITIONAL HOUSING.** Buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance. Uses meeting this definition shall be permitted, conditionally permitted, or prohibited as similar uses in the same zone.

**USE.** The purpose for which land or premises or a building thereon is designed, arranged, or intended, or for which it is or may be occupied or maintained.

**YARD.** An open space, other than a court, on the same lot with a building, which open space is unoccupied and unobstructed from the ground upward, except as otherwise permitted in this chapter.

**YARD, FRONT.** A yard extending across the front of the lot between the inner side yard lines and measured between the front lot line and the nearest line of the main building.

**YARD, REAR.** A yard extending across the full width of the lot and measured between the rear line of the lot and the nearest line or point of the main building nearest the rear line of the lot.

**YARD, SIDE.** A yard on each side of a building between the building and the side line of the lot and extending from the front line to the rear yard.

**ZONE.** A portion of the city within which certain uses of land and buildings are permitted or prohibited and within which certain yards and other open spaces are required and certain height limited are established for buildings, all as set forth and specified in this chapter.

**ZONE** shall mean and include the word **DISTRICT**.

**SECTION 2.** Section 154.061 of the San Joaquin Municipal Code is hereby amended to read as follows:

The following uses are permitted in R zones.

(A) Residential structures together with the accessory buildings customary to such use.

(B) Flower and vegetable gardens, orchards, the raising of tree crops, berry, or bush crops for the purpose of propagation and culture, including wholesaling crops raised on the premises; provided, no signs, displays, or stands are used in conjunction therewith.

(C) Swimming pools for either individual, family, or communal use on an exclusive noncommercial basis.

(D) Accessory Dwelling Units subject to the standards contained in § 154.071.
(E) Junior Accessory Dwelling Units subject to the standards contained in § 154.071.

SECTION 3. Section 154.063 of the San Joaquin Municipal Code is hereby amended to read as follows:

The following uses in a residential district may be approved by the City Manager.

(A) Enclosed temporary construction materials storage yards required in connection with the development of subdivision, and temporary subdivision sales offices and signs and model home display areas.

(B) Gas and electric transmission lines, electrical transmission and distribution substations, gas regulator stations, communications equipment buildings, public service pumping stations, and elevated pressure tanks.

(C) Home occupations.

(D) Foster homes, rehabilitation facilities, day care centers, and other related facilities which provide housing for six or fewer unrelated persons.

(E) Accessory uses and buildings normally incidental to any of the permitted or conditionally permitted uses. This provision shall not be construed as permitting any commercial use or occupation other than those specifically listed.

(F) Guest units, studios, caretakers quarters, and similar detached dwelling units having no kitchen or cooking facilities.

(G) Accessory dwelling units subject to the standards contained in § 154.071.

(H) Junior accessory dwelling units subject to the standards contained in § 154.071.

SECTION 4. Section 154.071 of the San Joaquin Municipal Code is hereby amended to read as follows:

In addition to the primary residence on any R-1, R-2, and R-3 zoned lot that contains only one single family residence, an accessory dwelling unit or junior accessory dwelling unit may be allowed through approval of an administrative permit subject to the following additional standards:

(A) Applicability. As provided under state law, an accessory dwelling unit or junior accessory dwelling unit associated with an existing single-family residence that conforms to this Section shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located; and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designation for the lot.
(B) Applicant Eligibility. Only the owner-occupant of the primary residence located on the residential lot shared by the accessory dwelling unit may apply for a permit under this section.

(C) Permit Application, Approval Process and Timelines. The City, within 120 calendar days of receipt of a complete application for an accessory dwelling unit or junior accessory dwelling unit, shall approve said application ministerially when all of the following requirements are met:

1. The accessory dwelling unit or junior accessory dwelling unit is located in conjunction with an existing or new single family residence;

2. There is only one accessory dwelling unit or junior accessory dwelling unit per single family lot, and the unit is contained within the space of the existing residence, detached structure, or detached existing accessory structure including an existing garage;

3. The accessory dwelling unit has exterior access, which is independent from the existing single family residence; and

4. The side and rear setbacks are sufficient for fire safety.

(D) A new or separate utility connection directly between the accessory dwelling unit or junior accessory dwelling unit and the utility or a related connection fee or capacity charge shall not be required.

(E) A parcel proposed for an accessory dwelling unit or junior accessory dwelling unit shall be developed with only one existing or new owner-occupied single-family dwelling.

(F) Design Standards. An accessory dwelling unit shall comply with the following

1. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area of the primary single-family residence, with a maximum increase in floor area of 1,200 square feet. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 feet;

2. Be architecturally compatible with the main dwelling unit and garage;

3. Shall conform to the height, open space, lot coverage, and setback requirements of the R-1, R-2, and R-3 zones along with other requirements of the zoning code and other applicable city codes.

4. Contain separate kitchen and bathroom facilities;

5. May be allowed in an existing garage converted to an accessory dwelling unit or junior accessory dwelling unit that does not meet current setback requirements provided that the loss of parking is replaced in any lawful configuration on the site.

6. No fire sprinklers shall be required unless they are required for the primary residence.
(7) Parking requirements for accessory dwelling units shall not exceed one parking space per unit. The parking space may be provided as tandem parking, including on an existing driveway or in a setback area, excluding the non-driveway front yard setback.

(8) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces. Tandem spaces may consist of 2 or more vehicles lined up one behind the other.

(9) Parking is not required in the following instances:
   
i. The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

   ii. The accessory dwelling unit is located within an architecturally or historically significant historic district.

   iii. An accessory dwelling unit that is part of the proposed existing primary residence or accessory structure.

   iv. When there is a car share vehicle located within one block of the accessory dwelling unit.

(G) Either the primary or accessory dwelling unit may be for rental purposes and neither unit may be sold separately.

(H) A rental agreement for an accessory dwelling unit or junior accessory dwelling unit shall be for a minimum of 30-days.

(I) No application under this section shall be considered for junior accessory dwelling unit or accessory dwelling unit on any lot less than 5,000 square feet in area.

(J) Junior Accessory Dwelling Units shall comply with the following requirements:

   (1) Be constructed or designated within the existing walls of the existing single-family dwelling and require inclusion of an existing sleeping quarter and shall be no greater than 500 square feet in size.

   (2) Include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

   (3) Include an efficiency kitchen, which shall include all of the following: a sink with a maximum waste line diameter of 1.5 inches, a cooking facility with appliances that do not require electrical service greater than 120 volts, or natural, or propane gas, a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.
(4) The single-family dwelling in which the junior accessory dwelling unit may be permitted must be owner-occupied. A covenant to this effect shall be recorded with the County Recorder’s Office in a form acceptable to the City Attorney.

No parking shall be required for a junior accessory dwelling unit.

SECTION 5. Section 154.221 of the San Joaquin Municipal Code is hereby amended to read as follows:

(A) The following uses shall be permitted in UR zones:

(1) Grazing and the raising of field crops, fruit and nut trees, vines, vegetables, horticultural specialties, and livestock;

(2) The curing, processing, packaging, and shipping of agricultural products produced upon the premises where such activity is carried on in conjunction with, or as part of, a bona fide agricultural operation;

(3) Single-family residences and farm employee housing which are incidental to a permitted use or conditional use;

(4) Incidental and accessory structures and uses located on the same site with a permitted use, including barns, stables, coops, tank houses, storage tanks, wind machines, windmills, silos, and other farm outbuildings; private garages and carports; one guest house without a kitchen for each residence on the site; and storehouses, garden structures, greenhouses, and the storage of petroleum products for the use of persons residing on the site;

(5) Irrigation and flood control facilities; and

(6) Home occupations.

(7) Accessory dwelling units subject to the standards contained in § 154.071.

(8) Junior Accessory Dwelling Units subject to the standards contained in § 154.071.

(B) The following uses may be permitted by the City Council by the issuance of a conditional use permit;

(1) Agricultural service establishments primarily engaged in performing animal husbandry or horticultural services on a fee or contract basis, including plant nurseries and landscape gardening; landscape contracting; offices of veterinarians; animal hospitals; poultry farms; boarding and training horses; feed lots; and hog farms;

(2) Public and private charitable institutions, hospitals, sanitariums, rest homes, nursing homes, and cemeteries;

(3) Commercial stables and riding academies;
(4) Public and quasi-public uses of an educational, administrative, recreational, public service, cultural, or religious type;

(5) Private and noncommercial clubs and lodges;

(6) Sewage treatment plants;

(7) Signs appurtenant to any permitted use may be erected in UR zones subject to all the laws, rules, and regulations of the city pertaining to signs, including, but not necessarily limited to, the terms and provisions of Chapter 152 of this code.

SECTION 6. CEQA. The proposed ordinance is statutorily exempt from CEQA pursuant to CCR Title 14, Chapter 3, Section 15282(h): "The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code."

SECTION 7. Effective Date. This ordinance shall become effective thirty days after its adoption.

SECTION 8. Publication. Upon passage, this ordinance or a summary of the same shall be published within fifteen (15) days of passage, pursuant to the laws of the State of California, in the San Joaquin News, a newspaper of general circulation published and circulated in said City of San Joaquin. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted.
The foregoing ordinance was introduced at a regular meeting of the City Council of the City of San Joaquin held on ____________, 2019, and was passed and adopted at a regular meeting of the City Council held on ____________, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: 

APPROVED:

______________________________  ________________________________
Lupe Estrada, Deputy City Clerk  Mayor, City of San Joaquin
NOTICE OF PUBLIC HEARING

Notice is hereby given that at 6:00 p.m. on June 4, 2019, the City of San Joaquin Planning Commission will hold a Public Hearing at 21991 Colorado Avenue (B), San Joaquin, CA to consider the following:

Amending sections 154.002, 154.061, 154.063, 154.071, 154.221 relating to accessory dwelling units and repealing sections 154.080 to 154.100 and adding sections 154.080 to 154.100 relating to affordable housing density bonus, procedures.

These amendments have been determined to be exempt from the California Environmental Quality Act (CEQA) per section 15282. Other Statutory Exemptions (h) related to the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code and Section 65584 related to the promotion of affordable housing.

Persons interested should appear at the above Public Hearing on June 4, 2019, in order to make their comments known. Persons who are unable to attend may direct written comments to Elizabeth Nunez, City Manager at 21900 Colorado St. or P.O. Box 758, San Joaquin, CA 93660.

In addition, information regarding the project, including staff report and draft ordinance language, may be reviewed or obtained from the City Clerk at the above address, weekdays between the hours of 8:30 am to noon, and 1:00 to 4:30 pm.

If you require special accommodations to participate in the public hearing, please contact Lupe Estrada at (559) 693-4311.

Elizabeth Nunez
City Manager
NOTICE OF
PUBLIC HEARING

Notice is hereby given that at 6:00 p.m. on June 4, 2019, the City of San Joaquin Planning Commission will hold a Public Hearing at 21991 Colorado Avenue (BL San Joaquin, CA to consider the following:

Amending sections 154.002, 154.061, 154.063, 154.071, 154.221 relating to accessory dwelling units and repealing sections 154.080 to 154.100 and adding sections 154.080 to 154.100 relating to affordable housing density bonus procedures.

These amendments have been determined to be exempt from the California Environmental Quality Act (CEQA) per section 15262.

Other Statutory Exemptions (h) related to the adoption of an ordinance regarding second units to implement the provisions of Sections 65552.1 and 65552.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code, and Section 85584 related to the promotion of affordable housing.

Persons interested should appear at the above Public Hearing on June 4, 2019, in order to make their comments known. Persons who are unable to attend may direct written comments to Elizabeth Nunez, City Manager at 21900 Colorado St or P.O. Box 758, San Joaquin, CA 93660.

In addition, information regarding the project, including staff report and draft ordinance language, may be reviewed or obtained from the City Clerk at the above address, weekdays between the hours of 8:30 a.m. to noon and 1:00 to 4:30 p.m.

If you require special accommodations to participate in the public hearing, please contact Lupe Estrada at (559) 663-965.
RESOLUTION NO. 2019-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
APPROVING REVISED FEES FOR CITY FACILITIES AND PARKS

WHEREAS, the City Council has adopted reasonable fees for the use of City Facilities and Parks; and

WHEREAS, the City periodically reviews all fees during the budget process and as needed; and

WHEREAS, the City Council has determined that the City Facilities and Park fees be amended to reflect the reasonable cost of providing the services and to allow for affordability; and

WHEREAS, after review and consideration, it is deemed by the City Council that it is in the best interest of the City and its residents that certain fees be adjusted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN RESOLVES as follows:

Section 1. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. Current City fees are amended as follows:

<table>
<thead>
<tr>
<th>ALL</th>
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</thead>
<tbody>
<tr>
<td>Administrative Fee</td>
<td>$0.00</td>
</tr>
<tr>
<td>Key Deposit (Refundable)</td>
<td>$25.00</td>
</tr>
<tr>
<td>Liability Insurance (required/unless furnished)</td>
<td>$144.58</td>
</tr>
<tr>
<td>Security Guards (required w/Alcohol)</td>
<td>TBD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VETERANS MEMORIAL HALL</th>
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</thead>
<tbody>
<tr>
<td>Deposit (Refundable)</td>
<td>$150.00</td>
</tr>
<tr>
<td>Cleaning Charge-Surface clean and restock of products</td>
<td>$75.00</td>
</tr>
<tr>
<td>Rental Fee No Kitchen-includes tables &amp; chairs</td>
<td></td>
</tr>
<tr>
<td>Residents</td>
<td>$330.00</td>
</tr>
<tr>
<td>Non-Residents</td>
<td>$440.00</td>
</tr>
<tr>
<td>Funeral Event</td>
<td>$275.00</td>
</tr>
<tr>
<td>Resident Veterans</td>
<td>$165.00</td>
</tr>
<tr>
<td>Veteran Groups</td>
<td>$0 on approved holidays</td>
</tr>
<tr>
<td>Non-Profits/Government Agency</td>
<td>$0</td>
</tr>
</tbody>
</table>

<p>| Rental Fee w/Kitchen-includes table &amp; chairs |               |
| Residents | $495.00 |
| Non-Residents | $605.00 |
| Funeral Events | $440.00 |
| Resident Veterans | $248.00 |
| Veteran Groups | $0 on approved holidays |
| Non-Profits/Government Agency | $0 |
| Conference Room/Per Hour (Minimum 2 hour fee) | $39 |
| Conference Room with Equipment/Set up (Minimum 2 hour fee) | $55 |</p>
<table>
<thead>
<tr>
<th>LEO CANTU COMMUNITY CENTER</th>
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</thead>
<tbody>
<tr>
<td>Cleaning Deposit/No Alcohol</td>
</tr>
<tr>
<td>Non-Profits/Government Agency (Deposit Only)</td>
</tr>
<tr>
<td>Rental Fee Main Room/Per hour</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SENIOR CENTER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cleaning Deposit/No Alcohol</td>
</tr>
<tr>
<td>Non-Profits/Government Agency (Deposit Only)</td>
</tr>
<tr>
<td>Rental Fee/Per hour</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Park Deposit Fee</td>
</tr>
<tr>
<td>Government Agency (Deposit Only)</td>
</tr>
<tr>
<td>Concession Stand</td>
</tr>
<tr>
<td>Park Lights/Per hour (Non youth Organization)</td>
</tr>
<tr>
<td>Park Lights/Per hour (Youth Organization)</td>
</tr>
<tr>
<td>General Park use/No Alcohol</td>
</tr>
<tr>
<td>General Park use/Alcohol</td>
</tr>
<tr>
<td>Youth Sports (Events) I day use</td>
</tr>
<tr>
<td>Youth Sports (monthly or season fee)</td>
</tr>
<tr>
<td>Non-Profits</td>
</tr>
<tr>
<td>Special Events Deposit</td>
</tr>
<tr>
<td>Special Events Hourly</td>
</tr>
<tr>
<td>Special Events/Alcohol</td>
</tr>
<tr>
<td>Special Events Day Rate</td>
</tr>
</tbody>
</table>

Section 3. Resolution No. 2016-05 is superseded by this resolution. Except as amended by this resolution all other existing City fees shall continue in full force and effect.

Section 4. Limited waiver of fees for certain uses of City Facilities and Parks by Governmental Agencies, Nonprofit Educational Institutional and Nonprofit Corporations are to adhere to Attachment 1.

Section 5. City staff is directed to take all administrative actions necessary to implement the attached listing of effective City fees.

Section 6. This resolution shall be effective upon adoption.

The foregoing Resolution No. 2019-25 was passed and adopted at a regular meeting of the City Council of the City of San Joaquin held on June 4, 2019.

AYES: 
NOES:  
ABSENT:  
ABSTAIN:  

ATTEST:  

Julia Hernandez, Mayor

Lupe Estrada, City Clerk
Attachment 1

LIMITED WAIVER OF FEES FOR CERTAIN USES OF CITY
FACILITIES AND PARKS BY GOVERNMENTAL AGENCIES,
NONPROFIT EDUCATIONAL INSTITUTIONS, AND NONPROFIT
CORPORATIONS

The City Council has adopted reasonable fees for the use of City Facilities and Parks; and the City periodically receives requests for the use of City facilities and parks by governmental agencies, nonprofit educational institutions, and nonprofit corporations which wish to provide services to the community; and

The City Council has determined that it is in the best interest of the City and its residents to provide limited waivers of fees to governmental agencies, nonprofit corporations, and nonprofit educational institutions which wish to use City facilities and parks for the purpose of providing programs, activities, or services that promote education, arts, culture, civic activities services to the community. After review and consideration, it is deemed by the City Council that the public interest is served by the waiver of fees.

Fees for the use of City facilities and parks are waived for local, state, and federal governmental agencies; nonprofit educational institutions, and nonprofit corporations subject to the following conditions:

a. The use shall be for programs, activities, or services that promote education, arts, culture, civic activities which shall be open to the public; and
b. The use shall not be to promote religious, sectarian, or private purposes; and
c. The entity seeking a waiver under this resolution shall submit information to the City describing the dates and proposed use; and
d. City residents shall not be charged fees for admission to or participation in an activity, program, or special event; and
e. Nonprofit corporations shall submit documentation which prove the existence of the User as a legal entity in good standing.

The Council finds that the waiver of fees as set forth in this resolution serve a public purpose and are in the best interest and welfare of the City and its residents.

Because facilities and parks are limited, waiver of fees for each entity shall be limited to four times per year. However, entities wishing to use the facilities or parks more than four times a year may work with the City Manager for an agreement to be submitted to the City Council for approval.

Except as amended by this resolution all other existing City fees shall continue in full force and effect.

City staff is directed to take all administrative actions necessary to implement.
ORDINANCE NO. 2019-202

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
REPEALING CHAPTER 114 OF TITLE XI OF THE SAN JOAQUIN MUNICIPAL
CODE AND ADDING NEW CHAPTER 114 TO TITLE XI OF THE SAN JOAQUIN
MUNICIPAL CODE RELATING TO YARD SALES

THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 114 of Title XI of the San Joaquin Municipal Code is repealed.

SECTION 2. Chapter 114 is added to Title XI of the San Joaquin Municipal Code to read as follows:

CHAPTER 114: YARD SALES

Section 114.01. Permit Required

Section 114.02. Limitation on Number of Permits per Year

Section 114.03. Fee

Section 114.04. Exemption and Limitations

§ 114.01 PERMIT REQUIRED.

(A) A resident of the city is not required to have a business license to hold a yard sale at his or her residence. However, anyone holding a yard sale shall first secure a permit from the City Clerk's office.

(B) The term “yard sale” in this chapter applies to yard sale, rummage sale, or garage sale. As used in this chapter, YARD SALE, RUMMAGE SALE or GARAGE SALE means an occasional or casual sale of secondhand goods and/or goods donated by individuals or nonprofit organizations. Items to be sold must be the property of the permit holder, or members of his or her immediate family, or of a non-profit organization, and shall not include items acquired or consigned solely for the purpose of being sold for private profit. Yard sales may not be used as a retail outlet.

§ 114.02 LIMITATION ON NUMBER OF PERMITS PER YEAR

(A) Yard Sale permits will be issued only four times per calendar year and only to City residents.

(B) Yard Sale permits will be issued for the second weekend in February, May, August, and November. The term weekend as used in this ordinance means “Friday, Saturday, and Sunday.”
§ 114.03 FEE.

(A) There shall be a fee for each permit issued.

(B) A fee shall be charged as set forth by resolution of the City Council.

§ 114.04 EXEMPTION AND LIMITATIONS.

(A) Yard sales held for charitable purposes are specifically exempt from all fee requirements of the provisions of this chapter.

(B) Signs advertising a yard sale may not exceed six square feet in size. The signs shall be taken down and removed promptly upon the conclusion of the sale. Nothing in this section should be construed as authorization to post signs on utility poles, sidewalks or trees; or on public property or facilities.

SECTION 3. Effective Date. This ordinance shall become effective thirty days after its adoption.

SECTION 4. Publication. Upon passage, this ordinance or a summary of the same shall be published within fifteen (15) days of passage, pursuant to the laws of the State of California, in the San Joaquin news, a newspaper of general circulation published and circulated in said City of San Joaquin. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of San Joaquin held on ___________, 2019, and was passed and adopted at a regular meeting of the City Council held on ___________, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: APPROVED:

______________________________  ______________________________
Lupe Estrada, Deputy City Clerk  Mayor, City of San Joaquin
RESOLUTION NO. 2019-19


BE IT RESOLVED that the City of San Joaquin hereby extends the 2018-2019 Budget through the month of July 2019 and authorizes spending in accordance with the levels prescribed in that balanced budget assuming revenues to offset expenditures.

The foregoing resolution was adopted at regular meeting of the City Council for the City of San Joaquin this 4th day of June 2019 and passed at said meeting by the following vote:

__________________________
Julia Hernandez, Mayor

ATTEST:

I Lupe Estrada, City Clerk of the City of San Joaquin, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the San Joaquin Council Chambers on June 4, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

__________________________
Lupe Estrada, City Clerk
STAFF REPORT

AGENDA ITEM: Resolution Awarding a Contract to Gouveia Engineering, Inc. and Authorizing the City Manager to Execute the Agreement for On-Call Engineering Services for Federally Funded Transportation Projects for the City of San Joaquin

MEETING DATE: June 4, 2019

PREPARED BY: Elizabeth Nunez, City Manager

RECOMMENDATION:

Adopt Resolution No. 2019-20, awarding a contract to Gouveia Engineering, Inc. and authorizing the City Manager to execute the agreement for On-call Engineering Services for Federally Funded Transportation Projects for the City of San Joaquin.

BACKGROUND:

The City of San Joaquin is responsible for constructing transportation projects that receive Federal funding from the Federal Highways Administration (FHWA) and are administered through the California Department of Transportation (Caltrans). These funds are provided subject to Federal regulations and in order to comply, certain services including Engineering are contracted out to qualified firms due to the City’s limited staff and expertise.

FHWA allows for these type of Engineering services to be offered on an on-call basis for a maximum term of five (5) years. However, local agencies must go through an extensive Caltrans’ review process to select a firm and award an on-call contract for Architectural and Engineering (A&E) services. The City must conduct a procurement process for A&E services in strict accordance with the Federal regulations. Firms must be both qualified and certified to participate on FHWA contracts.

The City is in need of a qualified Consultant to continue these FHWA services for ongoing and future transportation projects that are funded strictly with Federal grants.

DISCUSSION:

Following the required A&E procurement process, City staff prepared and issued a request for qualifications for consultants to provide on-call FHWA Engineering Services for an initial term of three (3) years with an option for two additional 1-year terms (5 years total). Four (4) statement of qualifications were received from the following firms:

1. Gouveia Engineering, Inc.
2. TRC Engineering, Inc.
3. Ruggeri Jensen Azar Engineering
4. A&M Consulting Engineers
5. Willdan Engineering
City staff reviewed the proposals and selected Gouveia Engineering as the most qualified firm to provide these on-call services for the City of San Joaquin. Subsequently, City staff consulted with Caltrans for approval of Gouveia’s contract.

Having followed the A&E procurement process and having received the required Caltrans approvals, City staff recommends the City Council to award an on-call contract to Gouveia Engineering as shown on the attached consultant contract.

**FISCAL IMPACT:**

The on-call contract fees would be funded from Federal grants awarded for City projects.

**ATTACHMENTS:**

1. Resolution No. 2019-20
2. Consultant Services Contract effective June 5, 2019
3. Gouveia Engineering Proposal Fees dated February 15, 2019
AGREEMENT
CITY OF SAN JOAQUIN, CALIFORNIA
CONSULTANT SERVICES
CITY ENGINEER

THIS AGREEMENT is made and entered into effective the 1st day of July, 2019, by and between the CITY OF SAN JOAQUIN, a California municipal corporation (hereinafter referred to as "CITY") and Gouveia Engineering, Inc. (hereinafter referred to as "CITY ENGINEER").

RECITALS

A. CITY has determined there is a need for CITY ENGINEER Services and has issued a Request for Proposals; and

B. CITY ENGINEER has submitted to CITY a proposal to provide city engineer services; and

C. CITY ENGINEER is engaged in the business of furnishing technical and expert services as a CITY ENGINEER and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

D. CITY has determined to contract with CITY ENGINEER for city engineer services; and

E. This Agreement will be administered for CITY by the City Manager or her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereinafter contained to be kept and performed by the respective parties, the parties mutually agree as follows:

1. Scope of Services. CITY ENGINEER shall perform to the satisfaction of CITY the services described in Exhibit "A," including work incidental to, or necessary to perform, such services even though not specifically described in Exhibit "A," which is incorporated herein by reference as if fully set forth.

2. Licenses, Permits, Fees, and Assessments. CITY ENGINEER represents and warrants to CITY that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. CITY ENGINEER represents and warrants to CITY that CITY ENGINEER shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification or approval that is legally required for CITY ENGINEER to perform the Work and Services under this Agreement. CITY ENGINEER shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CITY ENGINEER's performance of the Work and Services required by this Agreement, and shall indemnify, defend, and hold harmless CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against CITY hereunder.
3. **Term of Agreement.** This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for a three (3) year term, subject to any earlier termination in accordance with this Agreement. This term may be extended on an annual basis for four additional years.

4. **Compensation.**
   
   (a) CITY ENGINEER'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be in accordance with the Fee Schedule set forth in Exhibit "B" and incorporated herein by reference. The Fee Schedule sets forth a schedule for general services and a schedule for grant-related services.
   
   (b) CITY ENGINEER shall provide at no charge five hours per month of consultation services to CITY management and staff.
   
   (c) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in 30 days.

5. **Modification of Scope, Compensation, or Other Terms.**
   
   (a) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification may include an adjustment to CITY ENGINEER'S compensation. Any change in the scope of services or a fee schedule must be made by written amendment to the Agreement signed by an authorized representative for each party. CITY ENGINEER shall not be entitled to any additional compensation if services are performed prior to a signed written agreement.

6. **Termination.**
   
   (a) **Termination for Convenience.** Either party may terminate this Agreement at any time by giving notice of such termination (including the effective termination date) at least thirty (30) calendar days before the effective date of such termination. In the event of termination for convenience, all finished or unfinished documents and other materials as described in the Scope of Work become the property of CITY.
   
   (b) **Termination for Cause.** If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), or other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.
   
   (c) In the event of termination, all finished or unfinished documents, reports, or other materials prepared by CITY ENGINEER under this Agreement shall become CITY'S property. CITY ENGINEER shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.
7. Coordination of Work.

(a) Representative of Consultant. Mario B. Gouveia, P.E. is a principal of Gouveia Engineering, Inc. and is hereby designated as being the principal and representative of CITY ENGINEER authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith. Mario B. Gouveia, P.E. shall be the designated City Engineer for CITY and Alfonso Manrique P.E. shall be the designated Assistant City Engineer for CITY. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for CITY to enter into this Agreement. The designated City Engineer and Assistant City Engineer may not be changed without prior written approval of the City Manager.

(b) City Manager. It shall be the CITY ENGINEER’s responsibility to ensure that the City Manager or designee is kept fully informed of the progress of the performance of the services, and the CITY ENGINEER shall refer any decisions which must be made by the CITY to the City Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the City Manager.

8. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by CITY ENGINEER pursuant to this Agreement shall not be made available to any individual or organization by CITY ENGINEER without the prior written approval of the City Manager. During the term of this Agreement, and thereafter, CITY ENGINEER shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary to CITY.

(b) Any and all writings and documents prepared or provided by CITY ENGINEER pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CITY ENGINEER shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

9. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CITY ENGINEER represents to CITY that CITY ENGINEER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CITY ENGINEER to do and perform such services in a skillful manner and CITY ENGINEER agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CITY ENGINEER from said professional standards.

10. Indemnification.

(a) To the furthest extent allowed by law, CITY ENGINEER shall indemnify, hold harmless, and defend CITY and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity
(including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of CITY ENGINEER, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

11. Insurance.

(a) Throughout the life of this Agreement, CITY ENGINEER shall pay for and maintain in full force and effect all insurance as required in Exhibit "C" or as may be authorized, and any additional insurance as may be required, in writing by the City Manager or her designee at any time and in her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CITY ENGINEER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CITY ENGINEER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CITY ENGINEER of its responsibilities under this Agreement. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CITY ENGINEER shall not be deemed to release or diminish the liability of CITY ENGINEER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CITY ENGINEER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CITY ENGINEER, its principals, officers, agents, employees, persons under the supervision of CITY ENGINEER, vendors, suppliers, invitees, CITY ENGINEERs, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CITY ENGINEER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CITY ENGINEER should subcontract all or any portion of the services to be performed under this Agreement, CITY ENGINEER and subcontractor(s) shall enter into "ACEC, Form C, Agreement between Consultant and Subconsultant in the form attached hereto as Exhibit "D."

12. Conflict of Interest and Non-Solicitation.

(a) CITY ENGINEER shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of
Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CITY ENGINEER shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CITY ENGINEER and the respective subcontractor(s) are in full compliance with all laws and regulations. CITY ENGINEER shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CITY ENGINEER shall immediately notify CITY of these facts in writing.

(b) In performing the work or services to be provided hereunder, CITY ENGINEER shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, or similar CITY body.

(c) CITY ENGINEER represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefit hereunder.

(d) Neither CITY ENGINEER, nor any of CITY ENGINEER’S subcontractors performing any services under this Agreement shall bid for, assist anyone in the preparation of a bid for, or perform any series pursuant to, any other contract in connection with this Agreement unless fully disclosed to and approved by the City Manager, in advance and in writing. CITY ENGINEER and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Agreement unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the CITY under this provision, CITY ENGINEER shall remain responsible for complying with Section 12(a) above.

(e) If CITY ENGINEER should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CITY ENGINEER shall include the provisions of this Section 12 in each subcontract and require its subcontractors to comply therewith.

13. **Covenant Against Contingent Fees.** CITY ENGINEER warrants that he has not employed or retained any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **General Terms.**

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the City Manager or her designee.

(b) Records of CITY ENGINEER’S expenses pertaining to the Agreement shall be kept on a generally recognizable accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CITY ENGINEER pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and
transcriptions for the same period of time. This Section 14(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CITY ENGINEER shall have provided evidence to CITY that CITY ENGINEER is licensed to perform the services called for by this Agreement (or that no license is required). If CITY ENGINEER should subcontract all or any portion of the work or services to be performed under this Agreement, CITY ENGINEER shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

15. **Nondiscrimination.** To the extent required by controlling federal, state, and local law, CITY ENGINEER shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CITY ENGINEER agrees as follows:

(a) CITY ENGINEER will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CITY ENGINEER will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CITY ENGINEER will ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CITY ENGINEER’S employment practices including, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CITY ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

16. **Independent Contractor.**

(a) In the furnishing of the services provided for herein, CITY ENGINEER is acting solely as an independent contractor. Neither CITY ENGINEER, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CITY ENGINEER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CITY ENGINEER is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CITY ENGINEER and CITY. CITY ENGINEER shall have no authority to bind CITY absent
CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CITY ENGINEER shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CITY ENGINEER and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CITY ENGINEER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Agreement, CITY ENGINEER shall be solely responsible, indemnify, defend, and save CITY harmless from all matters relating to employment and tax withholding for and payment of CITY ENGINEER'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CITY ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

17. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.

18. Assignment.

(a) This agreement is personal to CITY ENGINEER and there shall be no assignment by CITY ENGINEER of its rights of obligations under this Agreement without the prior written approval of the City Manager or her designee. Any attempted assignment by CITY ENGINEER, its successors or assigns, shall be null and void unless approved in writing by the or his/her designee.

(b) CITY ENGINEER hereby agrees not to assign the payment of any monies due CITY ENGINEER from CITY under the terms of this Agreement to any other individual(s), corporation(s), or entity(ies). CITY retains the right to pay any and all monies due CITY ENGINEER directly to CITY ENGINEER.

19. Compliance With Law. In providing the services required under this Agreement, CITY ENGINEER shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.
No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

21. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

22. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

23. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

24. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

25. **Attorneys’ Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys’ fees and legal expenses.

26. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

27. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement shall be null and void.

28. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

29. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

30. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the
entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CITY ENGINEER.

31. **Contact Information.** The following constitutes contact information for the parties:

**CITY:**

City of San Joaquin
Attn: Elizabeth Nunez, City Manager
21900 Colorado
P.O. Box 758
San Joaquin, CA 93660

Phone: 559-693-4311
Fax: 559-693-2193
Email: elizabethn@cityofsanjoaquin.org

**CITY ENGINEER:**

Gouveia Engineering, Inc.
Attn: Mario B. Gouveia, P.E.
456 Sixth Street
Gustine, CA 95322

Phone: 209-854-3300
Fax: 209-854-3600
Email: mgouveia@gouveiaengineering.com

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the parties have executed this Agreement at San Joaquin, California, the day and year first written above.

CITY OF SAN JOAQUIN, a
a California municipal corporation

By: __________________________
   Name

   __________________________
   Title

GOUVEIA ENGINEERING, INC.
a corporation

By: __________________________
   Mario B. Gouveia
   President

   __________________________
   Linda C. Gouveia
   Secretary

Any Applicable Professional License:
Number  C-53261
Name  Mario B. Gouveia
Date of issue:  02-10-95

Attachments:
   Exhibit “A” – Scope of Services
   Exhibit “B” – Fee Schedule
   Exhibit “C” – Insurance Requirements
   Exhibit “D” – ACEC, Form C, Agreement Between Consultant and Subconsultant
EXHIBIT "A"

SCOPE OF SERVICES

The following is a summary of duties that may be required of City Engineer. This outline is not intended to represent the entire scope of work but rather a substantial list of the tasks required by the City. The City Engineer's work shall be performed in accordance with all applicable laws.

A. Preparation of Engineering Reports and Technical Correspondence

1. Determine the need for preliminary studies; review all preliminary studies for compliance with ordinances, comprehensive plans, engineering standards and financial guidelines including and making recommendations based on budget and priorities:
   • Feasibility reports;
   • Construction inspection;
   • Creation of assessment rolls;
   • Plat review;
   • Utility studies;
   • Ground water system analysis and design;
   • Capital Improvement Program studies;
   • Prepare comments regarding reports, plans and studies of other agencies;
   • Present feasibility studies at public meetings

2. Assist in planning, coordinating and evaluating programs, plans, services equipment and infrastructure;
3. Assist in development of policies and procedures for effective operation of the City consistent with City policies, relevant laws, rules and regulations;
4. Assist in evaluation of Public Works' needs and formulation of short and long range plans in all areas of Public Works improvements including but not limited to: streets, water, sewer and storm drainage;
5. Assist as may be required in implementation of all water resource functions.
6. Participate in internal and external meetings involving engineering questions and issues;
7. Act as City liaison and City representative with other communities, County, State and Federal agencies in areas of responsibility;
8. Attend City Council meetings and work sessions as requested;
9. Attend other City meetings as requested;
10. Perform field inspections;
11. Address constituents' concerns personally and in writing as may be required.

B. Design and Bidding Services

1. Prepare plans and specifications for all portions of a project as determined by the engineer, with input of City staff;
2. Consult with State and Federal agencies having jurisdictional authority over each project as warranted;
3. Prepare and send advertisements for bids to the legal paper and the Construction Bulletin for solicitation of bids;
4. Reproduce contract documents for bidding purposes;
5. Review the bids and prepare bid tabulation;
6. Evaluate bids, make recommendation to City Council, assemble and award contracts.

C. Project Management/Construction Services (Public Improvement Projects)

1. Convene a pre-construction meeting with staff, contractors, utility company representatives, etc;
2. Perform construction staking;
3. Provide construction observation during construction;
4. Prepare and maintain detailed documentation, including photographs and/or video if warranted and a log of the contractor's progress;
5. Convene regular construction progress meetings as required;
6. Review of and make recommendation on contractor pay requests;
7. Prepare, review and recommend action for proposed change orders;
8. Review and recommend final acceptance of project by City;
9. Provide three (3) sets of as-built drawings upon conclusion of project;
10. Responsible for development of assessment rolls and other documentation relating to the assessment process;
11. Responsible for establishing and maintaining a library of the following records:
   - Permits and applications;
   - Contract documents;
   - Addenda;
   - Copies of referenced standard specifications;
   - Project schedules;
   - Shop drawings and submittals;
   - Applicable correspondence;
   - Records of pertinent telephone conversations;
   - File memoranda, directives and change orders;
   - Requests and recommendations for payment;
   - Project budgets and cost information;
   - Construction diaries and logs;
   - Records of noncompliance;
   - Field test results;
   - Record drawings;
   - Project photographs;
   - Project studies and reports;
   - Project progress meeting minutes;
   - Other information as necessary or required

D. Project Management/Construction Services (Public Improvements within Private Development Projects)

1. Review construction projects and specifications;
2. Monitor the construction process for compliance with City code, regulations, and standards and with approved plans;
3. Assure financial accountability of private projects as they relate to escrows and letters of credit;
4. Advise the City during performance of construction projects and give consideration and advice during the performance of services;
5. Review construction plans;
6. Construction observation and documentation for public improvements constructed with private development projects;
7. Generate reports on plats and construction proposals for City Council and Planning Commission;
8. Assist in development agreement process (fees, conditions, improvements, etc.)
9. Work with City Manager to ensure that costs and fees are charged back to private development projects;
10. Monitor charges and revenues associated with private development projects;
11. Assist in review of land-use applications and construction plans for private developments for consistency with City adopted engineering specifications, city policies, relevant rules and regulations;
12. Work with staff to ensure that relative City Council actions are implemented;
13. Meet with developers and members of the public on proposed development projects to communicate the processes and procedures involved with engineering and infrastructure development.

E. Additional Advisory Services

1. To the extent possible:
   a. Keep City Manager abreast of legislation affecting cities such as San Joaquin in areas described in A to D above.
   b. Keep City Manager abreast of grant opportunities for City.
2. Advise City Manager as to necessary reporting requirements to funding agencies and governmental entities in areas described in A to E above.
3. Review correspondence from Fresno COG and Caltrans and inform City Manager regarding necessary and/or recommended action.
EXHIBIT "B"

FEE SCHEDULE

Gouveia Engineering acknowledges that the negotiated fees as to Grant Programs may include an estimated percentage of administration and implementation funds to be allocated for work functions performed by City staff on state or federally funded projects.

<table>
<thead>
<tr>
<th>Title</th>
<th>Hourly Rate</th>
</tr>
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<tbody>
<tr>
<td>Principal Engineer</td>
<td>$135.00</td>
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<tr>
<td>Senior Engineer</td>
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<td>Associate Engineer</td>
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<td>Project Manager</td>
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Surveying
(Under Prevailing Wage Rates set by the State Department of Industrial Relations)

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<tr>
<th>Miscellaneous Charges</th>
<th>IRS Standard Mileage Rate</th>
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<tr>
<td>Travel Mileage</td>
<td>Cost plus 10%</td>
</tr>
<tr>
<td>Reimbursable Expenses</td>
<td>5% of Labor</td>
</tr>
<tr>
<td>General Project Expenses</td>
<td></td>
</tr>
</tbody>
</table>

Computers, reproduction, mail and telephone
INSURANCE REQUIREMENTS
Consultant Service Agreement between City of San Joaquin and Gouveia Engineering, Inc.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 – Any Auto).

3. Workers’ Compensation insurance as required by the California Labor Code and Employer’s Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to CITY ENGINEER’S profession. Architect’s and engineer’s coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CITY ENGINEER shall maintain limits of liability not less than:

1. General Liability:
   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability
   $1,000,000 per accident for bodily injury and property damage

3. Employer’s Liability
   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)
   $1,000,000 per claim/occurrence
   $2,000,000 policy aggregate
Umbrella or Excess Insurance

In the event CITY ENGINEER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CITY ENGINEER shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CITY ENGINEER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or her designee. At the option of the City Manager or her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or (ii) CITY ENGINEER shall provide a financial guarantee, satisfactory to City Manager or her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers.

3. CITY ENGINEER'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or endorsed to contain, the following provision: CITY ENGINEER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CITY ENGINEER.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CITY
ENGINEER must purchase “extended reporting” coverage for a minimum of five (5) years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days’ written notice by U.S. mail and by electronic mail (email), has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CITY ENGINEER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CITY ENGINEER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best’s Insurance Rating Guide; or authorized by City Manager.

Verification of Coverage

CITY ENGINEER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements re to be received and approved by the City Manager or her designee prior to CITY’S execution of the Agreement and before work commences.
**EXHIBIT 10-H2 COST PROPOSAL**

**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**

**(NON-PREVAILING WAGE CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)**

*Note: Mark-ups are Not Allowed*

**Consultant: Gouveia Engineering Inc.**

- ✗ Prime Consultant
- □ Subconsultant
- □ 2nd Tier Subconsultant

**Project No.**

**Contract No.**

**Participation Amount:** $995,000.00

**Date:** 02/15/2019

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**For Combined Rate**

- Fringe Benefit 38.41% + General and Administrative 66.31% = 104.72% Combined

**OR**

- For Home Office Rate
  - Fringe Benefit % + General and Administrative % = Home Office ICR%

- For Field Office Rate
  - Fringe Benefit % + General and Administrative % = Field Office ICR%

---

**BILLING INFORMATION**

<table>
<thead>
<tr>
<th>Name/Job Title/Classification</th>
<th>Hourly Billing Rates$</th>
<th>Effective Date of Hourly Rate</th>
<th>Actual or Avg. Hourly Rate$</th>
<th>% or $ Increase</th>
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<td>Mario Gouveia – President/Principal Engineer*</td>
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</tr>
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<td>Mark Arrieta – Engineering Asst II</td>
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<tr>
<td>Tina Whittsit – Engineering Asst I</td>
<td>$47.09</td>
<td>01/01/2019 – 12/31/2019</td>
<td>$20.00</td>
<td>0.0%</td>
</tr>
<tr>
<td>Danielle Fontaine – Engineering Asst I</td>
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<td>01/01/2019 – 12/31/2019</td>
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<td>0.0%</td>
</tr>
<tr>
<td>Morien Prakash, CAD Designer</td>
<td>$61.21</td>
<td>01/01/2019 – 12/31/2019</td>
<td>$26.00</td>
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</tbody>
</table>

**CALCULATION INFORMATION**

- Daily Rate: $185.53
- Weekly Rate: $1,298.71
- Annual Rate: $66,682.74

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**Page 4 of 9**

January 2018
NOTES:
1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**) . All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Indirect cost rates should be based on the consultant's annual accounting period, established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

**EXHIBIT 10-H2 COST PROPOSAL** Page 2 of 3

**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

**Consultant** Gouveia Engineering Inc.  
☒ Prime Consultant ☐ Subconsultant

**Project No.**  
**Contract No.**  
**Date** 02/15/2019

**SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)**

<table>
<thead>
<tr>
<th>Description of Item</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Total</th>
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<tbody>
<tr>
<td>Mileage Costs</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>IRS Std Mileage Rate</td>
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<tr>
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<tr>
<td>Subconsultant 1: Ground Zone Environmental Services</td>
<td></td>
<td></td>
<td></td>
<td>$ 90,000</td>
</tr>
<tr>
<td>Subconsultant 2: CVEAS</td>
<td></td>
<td></td>
<td></td>
<td>$ 50,000</td>
</tr>
<tr>
<td>Subconsultant 3:</td>
<td></td>
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<tr>
<td>Subconsultant 5:</td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

Note: Add additional pages if necessary.

NOTES:
1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.
Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Mario B Gouveia, PE
Signature: [Signature]
Email: mgouveia@gouveiaengineering.com
Address: 456 Sixth Street, Gustine, CA 95322
Title: President/Principal Engineer
Date of Certification (mm/dd/yyyy): 02/15/2019
Phone Number: (209) 854-3300

* An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

On-call Engineering Services for Federally Funded Transportation Projects.
CONSULTANT SERVICES CONTRACT
for the City of San Joaquin
for On-Call Engineering Services for Federally Funded Transportation Projects

ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as,
CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the “CONSULTANT” is as follows:
GOUVEIA ENGINEERING, INC.

Incorporated in the State of CALIFORNIA
The Project Manager for the “CONSULTANT” will be MARIO B. GOUVEIA.
The name of the “LOCAL AGENCY” is as follows:
CITY OF SAN JOAQUIN

The Contract Administrator for LOCAL AGENCY will be CITY MANAGER.

B. The work to be performed under this AGREEMENT is described in Article III Statement of
Work and the approved CONSULTANT’s Cost Proposal dated February 15, 2019. The
approved CONSULTANT’s Cost Proposal is attached hereto (ATTACHMENT 1) and
incorporated by reference. If there is any conflict between the approved Cost Proposal and this
AGREEMENT, this AGREEMENT shall take precedence.

C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend,
and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers
from and against any and all claims, damages, demands, liability, costs, losses and expenses,
including without limitation, court costs and reasonable attorneys’ and expert witness fees,
arising out of any failure to comply with applicable law, any injury to or death of any
person(s), damage to property, loss of use of property, economic loss or otherwise arising out
of the performance of the work described herein, to the extent caused by a negligent act or
negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the
performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage
which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as
determined by a Court of competent jurisdiction. The provisions of this section shall survive
termination or suspension of this AGREEMENT.

D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent
capacity. It is understood and agreed that CONSULTANT (including CONSULTANT’s
employees) is an independent contractor and that no relationship of employer-employee exists
between the Parties hereto. CONSULTANT’s assigned personnel shall not be entitled to any
benefits payable to employees of City.

E. LOCAL AGENCY is not required to make any deductions or withholdings from the
compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is
not required to issue W-2 Forms for income and employment tax purposes for any of
CONSULTANT’s assigned personnel. CONSULTANT, in the performance of its obligation
hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.

F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the Local AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.

H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.

I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY’s Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. CONSULTANT’s Project Manager shall meet with LOCAL AGENCY’s Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III STATEMENT OF WORK

A. CONSULTANT Services
Consultant services shall be those as required and listed on the City of San Joaquin Request for Qualifications (ATTACHMENT 2) and Gouveia Engineering Statement of Qualifications for
On-Call Engineering Services for Federally Funded Transportation Projects (ATTACHMENT 3), all attached hereto and incorporated by reference.

B. Right of Way
CONSULTANT shall provide right of way services pursuant to Article III, Paragraph A.

C. Surveys
CONSULTANT shall provide surveying services pursuant to Article III, Paragraph A.

D. Subsurface Investigations
Not applicable.

E. Local Agency Obligations
LOCAL AGENCY shall provide CONSULTANT all available data applicable to the AGREEMENT and that it is necessary to complete the Consultant services.

F. Conferences, Site Visits, Inspection of Work
This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings
CONSULTANT shall provide services for checking shop drawings pursuant to Article III, Paragraph A.

H. CONSULTANT Services During Construction
CONSULTANT shall provide construction services pursuant to Article III, Paragraph A.

I. Documentation and Schedules
AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

J. Deliverables and Number of Copies
CONSULTANT shall provide deliverables pursuant to Article III, Paragraph. Deliverables shall be provided in electronic format and hard copies.

ARTICLE IV PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on June 4, 2019 contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY’S Contract Administrator. The AGREEMENT shall end on June 3, 2022, unless extended by AGREEMENT amendment. The AGREEMENT may be extended for two (2) additional one-year terms upon mutual agreement between CONSULTANT and LOCAL AGENCY. The AGREEMENT shall not exceed a total of five (5) years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.
C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT’s approved Cost Proposal (ATTACHMENT 1). The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the first three (3) years of this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY’S Contract Administrator of itemized invoices in duplicate.

B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

E. Task Orders will be paid using specific rates of compensation based on the labor and other rates set forth in CONSULTANT’s approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.

J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.

K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

      City of San Joaquin
      City Manager, Contract Administrator
      21900 Colorado Avenue
      San Joaquin, CA 93660

L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.

M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.

P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed $ 995,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.
ARTICLE VI TERMINATION

A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days’ written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.

B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section Error! Reference source not found.0. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.

D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.
ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT’s Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT’s Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

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

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

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

D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT’s responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT’s Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion,
may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I’s review of the ICR audit work papers created by the CONSULTANT’s independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by A&I.

Accepted rates will be as follows:

a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT’s and/or the independent CPA’s revisions.

3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY...
no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT’s obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY’s obligation to make payments to the CONSULTANT.

B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT’s approved Cost Proposal.

C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.

D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by LOCAL AGENCY’s Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars ($5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT’s approved Cost Proposal and exceeding five thousand dollars ($5,000), with prior authorization by LOCAL AGENCY’s Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars ($5,000) or more. If the purchased equipment needs replacement and is
sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT’s expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project.

3. Pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal awards 2 CFR Part 200, participation for costs associated with equipment acquisition is subject to a) an approved indirect cost rate plan or b) on a project specific basis through an approved depreciation rate (amortized cost) analysis based on costs that are necessary, reasonable, and allocable to a specific Federal-aid project. Federal-aid funds will participate only in the portion of the amortized cost directly attributable to the time the equipment is used on a specific Federal-aid project. If multiple projects are involved, the amortized costs shall distributed equally to each project.

ARTICLE XII STATE PREVAILING WAGE RATES

A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at http://www.dir.ca.gov.

D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work 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 by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

a. The information contained in the payroll record is true and correct.

b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representative’s at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

a. A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual’s name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.

4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

c. Upon becoming aware of the Subconsultant’s failure to pay the specified prevailing rate of wages to the Subconsultant’s workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant’s employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor
Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars ($25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices
1. Where either the prime AGREEMENT or the sub-agreement exceeds thirty thousand dollars ($30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at https://www.dir.ca.gov/das/, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants’ compliance with these requirements. Penalties are specified in Labor Code §1777.7.
ARTICLE XIII CONFLICT OF INTEREST

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

B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

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

D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with
the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION AND STATEMENT OF COMPLIANCE

A. The CONSULTANT’s signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours’ notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.

E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.

G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT’s signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

A. This AGREEMENT is subject to 49 CFR Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. CONSULTANTs who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California’s statewide overall DBE goal.

B. The goal for DBE participation for this AGREEMENT is 13%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-O1: Consultant Proposal DBE Commitment, or in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

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

(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY’s Contract Administrator.

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

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

I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

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

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

L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY’s Contract Administrator within thirty (30) calendar days.
M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

B. The Certificate of Insurance will provide:

1. That the insurer will not cancel the insured’s coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.

2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.

3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

ARTICLE XX FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.

C. There shall be no change in CONSULTANT’s Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY’s Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY’s Contract Administrator and FINANCE DIRECTOR, who may consider written or verbal information submitted by CONSULTANT.

B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.
ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXVI OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT’s privileged information, as defined by law, or CONSULTANT’s personnel information, along with all other property belonging exclusively to City which is in CONSULTANT’s possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City’s sole risk.

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY CITY’s CONSTRUCTION CONTRACTOR

A. If claims are filed by LOCAL AGENCY’s construction contractor relating to work performed by CONSULTANT’s personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY’S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT’s personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT’s personnel services under this AGREEMENT.

C. Services of CONSULTANT’s personnel in connection with LOCAL AGENCY’s construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY’s operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY’s actions on the same, except to LOCAL AGENCY’s staff, CONSULTANT’s own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY’S written permission.

E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City’s attorney’s fees and disbursements, including without limitation experts’ fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI RETENTION OF FUNDS

A. No retainage will be withheld by LOCAL AGENCY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:
ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

CITY OF SAN JOAQUIN: GOUVEIA ENGINEERING, INC.:

ELIZABETH NUNEZ, CITY MANAGER MARIO B. GOUVEIA, PRESIDENT
RESOLUTION NO. 2019-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
AWARDING A CONTRACT TO GOUVEIA ENGINEERING, INC. AND AUTHORIZING THE
CITY MANAGER TO EXECUTE THE AGREEMENT FOR ON-CALL ENGINEERING
SERVICES FOR FEDERALLY FUNDED TRANSPORTATION PROJECTS FOR THE CITY OF
SAN JOAQUIN

WHEREAS, the City of San Joaquin is responsible for constructing transportation projects that receive Federal funding; and

WHEREAS, these Federal funds are provided by the Federal Highways Administration (FHWA) and are administered by the California Department of Transportation (Caltrans); and

WHEREAS, the Federal funds are subject to Federal regulations and in order to comply, certain services including Engineering are contracted out to qualified firms due to the City’s limited staff and expertise; and

WHEREAS, FHWA allows for these type of Engineering services to be offered on an on-call basis for a maximum term of five (5) years; and

WHEREAS, local agencies must go through an extensive Caltrans’ review process for selecting a firm and awarding an on-call contract for Architectural and Engineering (A&E) services; and

WHEREAS, the City must conduct a procurement process for A&E services in strict accordance with the Federal regulations; and

WHEREAS, firms must be qualified and certified to participate on FHWA contracts; and

WHEREAS, the City is in need of a qualified Consultant to continue these FHWA services for ongoing and future transportation projects funded strictly with Federal grants; and

WHEREAS, the City prepared and issued a request for qualifications for consultants to provide on-call FHWA Engineering Services for an initial term of three (3) years with optional two 1-year terms (5 years total); and

WHEREAS, the City received four (5) statement of qualifications from the following firms:

1. Gouveia Engineering, Inc.
2. TRC Engineering, Inc.
3. Willdan Engineering
4. A&M Consulting Engineers; and

WHEREAS, City staff reviewed the proposals and selected Gouveia Engineering as the most qualified firm to provide these on-call services for the City of San Joaquin and subsequently consulted with Caltrans for approval of this consultant contract; and

WHEREAS, City staff has followed the A&E procurement process and has received the required Caltrans approvals for awarding a contract to Gouveia Engineering; and

WHEREAS, the City Council desires to enter into a contract with Gouveia Engineering and delegates the
City Manager to execute the contract effective June 5, 2019.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Joaquin as follows:

Section 1. The above recitals are true and correct findings of the San Joaquin City Council.

Section 2. Approves a contract with Gouveia Engineering Inc. to provide on-call engineering services for federally funded transportation projects for the City of San Joaquin per the consultant contract effective June 5, 2019, and for a maximum term of 5 years.

Section 3. Authorizes the City Manager to execute the contract effective June 4, 2019, with Gouveia Engineering, Inc.

Section 4. This resolution shall be effective on June 5, 2019.

The foregoing resolution was adopted at a regular meeting of the City Council of the City of San Joaquin the 4th day of June, 2019 and passed at said meeting by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________
Julia Hernandez, Mayor

ATTEST:

______________________________
Lupe Estrada, City Clerk
RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 2019-22, adopting policies for the administration and procurement of Architectural and Engineering (A&E) services for state and federal funded transportation projects.

BACKGROUND:

The City of San Joaquin is responsible for constructing transportation projects that are state and federally funded. These Federal funds are provided by the Federal Highways Administration (FHWA). In order to comply with the Federal regulations and due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms. The Federal regulations set forth standards for procuring and administering A&E contracts.

The provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally funded engineering and design related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 31.201-3).

Pursuant to 23 CFR 172.5(b), local agencies shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with Federal-Aid Highway Program funding as specified in 23 U.S.C. 106(g)(4)(A).

The provision 23 CFR 172.5(b)(1) requires local agencies to adopt written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations.

The State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10, which sets forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and...
federal funded transportation projects to ensure compliance with applicable Federal and State laws and regulations and to maintain eligibility for Federal-Aid reimbursement.

The City of San Joaquin has developed additional policies for procuring and administering A&E contracts to ensure avoidance of conflict of interests in the performance of A&E services for state and federal funded transportation projects

**DISCUSSION:**

Recent Federal regulations require that Caltrans review and approve the local agencies’ procurement of A&E contracts for federally funded transportation projects. Caltrans is primarily focusing on compliance with competitive procurement and conflict of interest guidelines for these contracts.

The City has followed the attached Caltrans’ LAPM, Chapter 10, guidelines for awarding and managing past A&E contracts for federally funded projects. The City hereby formally adopts the current Chapter 10 guidelines and any updates thereto so that Caltrans may approve all future contracts for FHWA services and to remain compliant with Federal regulations. The City is also adopting the attached written policies for avoiding conflict of interests which mirror current City practices for administering A&E contracts.

**FISCAL IMPACT:**

There is no fiscal impact associated with this item.

**ATTACHMENTS:**

1. Resolution No.2019-22
2. Caltrans LAPM, Chapter 10 Consultant Selection
3. A&E Procurement and Administration Policies dated September 18, 2018
RESOLUTION NO. 2019-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
ADOPTING POLICIES FOR THE ADMINISTRATION AND PROCUREMENT
OF ARCHITECTURAL AND ENGINEERING (A&E) SERVICES FOR STATE
AND FEDERAL FUNDED TRANSPORTATION PROJECTS

WHEREAS, the City of San Joaquin is responsible for constructing transportation projects that are state and federally funded; and

WHEREAS, in order to comply with the Federal regulations and due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms; and

WHEREAS, the Federal regulations set forth standards for procuring and administering A&E contracts; and

WHEREAS, the provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally funded engineering and design related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 31.201-3); and

WHEREAS, pursuant to 23 CFR 172.5(b), local agencies shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with Federal-Aid Highway Program funding as specified in 23 U.S.C. 106(g)(4)(A); and

WHEREAS, the provision 23 CFR 172.5(b)(1) requires local agencies to adopt written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations; and

WHEREAS, the State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10, Consultant Selection which sets forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and federal funded transportation projects to ensure compliance with applicable Federal and State laws and regulations and to maintain eligibility for Federal-Aid reimbursement; and

WHEREAS, the City of San Joaquin has developed additional policies, dated June 5, 2019, to ensure avoidance of conflict of interests in the performance of A&E services for state and federal funded transportation projects; and
WHEREAS, the City of San Joaquin desires to adopt Caltrans’ LAPM Chapter 10 and the City’s conflict of interest policies for compliance with Federal regulations on the procurement and administration of A&E contracts.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Joaquin hereby:

1. Finds that the above recitals are true and correct.

2. The Local Assistance Procedures Manual, Chapter 10, Consultant Selection dated January, 2019, or as amended, is approved and adopted.

3. The A&E Services Administration and Procurement Policies developed by the City of San Joaquin for State and Federal Funded Projects dated June 5, 2019 are approved and adopted.

4. Authorizes the City Manager to approve amendments to the City’s adopted A&E Services Administration and Procurement Policies in consultation with the Federal Highways Administration.

5. This resolution shall be effective on June 5, 2019.

The foregoing resolution was adopted at a regular meeting of the City Council of the City of San Joaquin the 4th day of June, 2019 and passed at said meeting by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  

__________________________________________  
Julia Hernandez, Mayor

ATTEST:

__________________________________________  
Lupe Estrada, City Clerk
CITY OF SAN JOAQUIN
ARCHITECTURAL & ENGINEERING SERVICES ADMINISTRATION AND
PROCUREMENT POLICIES FOR
FEDERAL AND STATE FUNDED TRANSPORTATION PROJECTS

INTRODUCTION

In an effort to ensure the avoidance of fraud, waste and abuse in the performance of Architectural and Engineering (A&E) services, the City of San Joaquin (City) has established the following consultant selection and procurement procedures to be implemented on all federal and state funded transportation projects. The intent of these policies is to facilitate compliance with federal regulations and the State of California Department of Transportation (Caltrans) Local Assistance Procedures Manual. Deviation from these policies should only be considered in special cases and in consultation with Caltrans Local Assistance personnel.

I. Consultant Procurement Manual (CSPM)

The City shall adopt and follow the procedures contained within Caltrans’ Consultant Procurement Manual relating to the procurement and management of A&E contracts on federally and state funded transportation projects.

II. Contract Administrator

The City Manager shall serve as the Contract Administrator and have authority over advertisement, selection, and management of consultant contracts. City Manager shall also have primary responsibility for ensuring compliance with the CSPM and associated federal and state regulations related to the procurement and management of consultant services contracts.

III. Contract City Engineer

If City has secured the services of a Contract City Engineer, that person or firm shall not serve in a management role related to federal and/or state funded transportation projects. Specifically, the Contract City Engineer shall not perform any of the following management duties related to federally and state funded transportation projects:

a. Hire, manage or supervise any City employee.

b. Procure the services of any private person or firm to provide the City with contracted services.

c. Approve any payments to City employees or contracted persons and/or firms.

d. Approve any changes in the scope of work of a project.
e. Approve any changes in the costs associated with a project

f. Approve any change orders on a project.

The Contract City Engineer may perform the following duties under the supervision of the Contract Administrator:

a. Perform design services

b. Prepare and submit to Caltrans Local Assistance on the City's behalf the following documents subject to the prior review and approval of the Contract Administrator:

   i. Authorizations to Proceed

   ii. Progress Invoices for Reimbursements

   iii. DBE Goals Documentation

   iv. Contract Award Documentation

   v. Final Report of Expenditures

c. Assist the City in responding to inquiries from Caltrans Local Assistance and/or Federal Highway Administration (FHWA) related to the project(s).

d. Provide construction phase services

If the Contract City Engineer has been engaged to provide construction phase services for projects in which the Contract City Engineer also will or has provided design phase services, the following controls shall be followed:

a. Contract City Engineer shall only prepare progress estimates based on field observations of in-place work and such estimates shall be subject to the review and approval by Contract Administrator and/or Public Works Director prior to submission to the City's finance department for payment.

b. Contract City Engineer may respond to RFI's that are merely clarifications of the project plans and specifications or the design intent and which do not result in a change of scope and/or cost of the work. In the event a change in scope and/or cost of the work is necessary, the RFI shall be reviewed by the Public Works Director and approved by the Contract Administrator.

c. All change orders shall be reviewed by the Public Works Director and approved by the Contract Administrator.
d. Federal reimbursement requests may be prepared by the Contract City Engineer, however, must be reviewed and approved by the Contract Administrator prior to submission to Caltrans Local Assistance for processing.

IV. PUBLIC WORKS DIRECTOR

a. During the course of the design and construction phases of a federally or state funded transportation project, the Public Works Director shall review and oversee proposed designs and related construction activities of public works projects to ensure compliance with City industry standards as well as to ensure the project conforms to the proposed scope of work and goals of the project. In the event of a conflict between the opinion of the Public Works Director and Contract City Engineer, the matter shall be referred to the Contract Administrator to resolve the conflict.

V. CONFLICT OF INTEREST

a. In the event that a conflict of interest occurs resulting from changes in personnel, contract changes, or other unforeseen conditions, the Contract Administrator shall immediately take steps to remedy the conflict including suspension of work and/or termination of contracts and shall notify Caltrans Local Assistance of the conflict of interest and steps to remedy and resume the work.

VI. FEDERAL AND STATE REGULATIONS

a. It is the intent of these policies and procedures to ensure the absence of fraud, waste and abuse on federal and state funded transportation projects. As such, these policies will be updated if new regulations are developed not included in these policies or the CSPM. Revisions to these policies will be included in new contracts procured through these policies or will be included by amendment into existing contracts as determined appropriate by the Contract Administrator.
Chapter 10 Consultant Selection

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<td>Protest/Appeals/Reinstatement Procedures</td>
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Exhibits

Exhibits applicable to this chapter can be found at:
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm

**Exhibit 10-A:** A&E Consultant Financial Document Review Request

**Exhibit 10-B:** Suggested Consultant Evaluation Sheet

**Exhibit 10-C:** A&E Consultant Contract Reviewers Checklist

**Exhibit 10-G:** Individual A&E Task Order DBE Utilization (needs linked)

**Exhibit 10-H:** Sample Cost Proposal (Example#1 thru #4)

**Exhibit 10-I:** Notice to Proposers DBE Information

**Exhibit 10-K:** Consultant Annual Certification of Indirect Costs and Financial Management System

**Exhibit 10-01:** Consultant Proposal DBE Commitment

**Exhibit 10-02:** Consultant Contracts DBE Commitment

**Exhibit 10-O:** Disclosure of Lobbying Activities

**Exhibit 10-R:** A&E Sample Contract Language

**Exhibit 10-S:** Consultant Performance Evaluation

**Exhibit 10-T:** Conflict of Interest & Confidentiality Statement

**Exhibit 10-U:** Consultant in Management Support Role Conflict of interest and Confidentiality Statement
### SECTION 10.1: FEDERALLY FUNDED A&E CONTRACTS

#### Procurement Planning

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<td>Local Agency</td>
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1. *Select Project*
2. *Set Project Objectives*
3. *Determine Project Schedule*
4. *Obtain CTC Allocation/Federal Authorization to Proceed prior to beginning reimbursable work*
5. *LAPM Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement*, if applicable:
   - submit Conflict of Interest and Scope of Work (SOW) to DLA-HQ, prior to contract advertisement.

1. *Identify Need for Consultant*
2. *Appoint Contract Administrator*
3. *Segment Project Work*
4. *Define SOW of A&E Consultant*
5. *Specify Products to be delivered*

1. *Estimate Cost of Consultant Work*
2. *Determine Type of Contract (Project Specific or On-Call)*
3. *Determine MOP: Lump Sum; Actual Cost-Plus-Fixed-Fee; Cost Per Unit of Work; or Specific Rate of Compensation*

---

**A&E** = Architectural and Engineering  
**IOAI** = Caltrans Independent Office of Audits and Investigations  
**CT** = Caltrans  
**DBE** = Disadvantaged Business Enterprise  
**DLA** = Division of Local Assistance  
**DLAE** = District Local Assistance Engineer  
**DLA-HQ** = Division of Local Assistance-Headquarters  
**LAPG** = Local Assistance Program Guidelines  
**LAPM** = Local Assistance Procedures Manual  
**MOP** = Method of Payment  
**RFP** = Request for Proposal  
**RFQ** = Request for Qualifications  
**SOQ** = Statement of Qualifications  
**SOW** = Statement/Scope of Work

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**Figure 10-1:** A&E Contract Procurement Process Workflow Diagram
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* Determine Solicitation Document; RFP or RFQ
* Appoint Consultant Selection Committee
* Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-I: Conflict of Interest & Confidentiality Statement) from all members involved in process
* Determine Procurement Schedule
* Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ

* Prepare RFP or RFQ documents
* Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline
* Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites)
* Issue RFP or RFQ (direct mailing, web posting)

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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued
## Evaluation and Selection of Consultant

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| *Distribute Proposals or SOQs to Selection Committee members*  
*Ensure Committee members receive the appropriate score sheet to use (see Exhibit 10-B: Suggested Consultant Evaluation Sheet)*  
*Convene Selection Committee and evaluate submittals; Perform reference checks*  
*Develop Final Ranking or Short List*  
*Notify proposers of ranking/Short List*  
*Retain all original score sheets and summaries*  | *Send out RFPs to Short List (two-step process)*  
*Conduct Interview of Short List (if needed)*  
*Develop Final Ranking of Consultants, and notify all interviewees*  
*Retain all original score sheets and summaries*  
*Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see Exhibit 10-R: A&E Sample Contract Language for standard contract language and provisions)* | *Open and analyze cost proposal from the Highest Ranked firm*  
*Review and evaluate 10-A package and supporting documents, if applicable*  
*Issue Financial Review Letter, if applicable*  
*Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval* |

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**Figure 10-1: A&E Contract Procurement Process Workflow Diagram - continued**
### Contract Negotiation

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| *Negotiate contract costs with the most qualified Consultant*  
*Prepare and retain record of cost negotiations*  
*Initiate CT IOAI Financial Review Section (LAPM Section 10.1.3) and send documents (Exhibit 10-A: A&E Consultant Financial Document Review Request), if applicable, to Caltrans IOAI*  
*Receive and analyze findings of the Financial Review Letter from CT IOAI, if any*  
*Address and resolve all findings by IOAI and incorporate into final contract and cost proposal*  
*If negotiations with First ranked firm is unsuccessful, formally terminate cost negotiations with Consultant and begin Step 9 with next ranked consultant*  
*Send Exhibit 10-C to DLA-HQ for acceptance prior to award*  
*Retain acceptance of Exhibit 10-C from DLA-HQ*  

### Contract Execution

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| *Finalize contract, cost proposal*  
*Retain copy of contract Financial Review Letter with acceptance, denial, or adjustment of the ICR*  
*Sign and Execute contract*  
*Offer and conduct debriefing meetings with consultant who asked for one*  
*Send copies of executed contract and DBE Commitment (Exhibits 10-01: Consultant Proposal DBE Commitment, and Exhibit 10-02: Consultant Contract DBE Commitment) to DLA*  
*Close out contract procurement process*  

### DLAE

*Prior to concurring with invoice payment related to consultant services, ensure that district confirms acceptance of Exhibit 10-C and has a copy of the executed consultant contract on file and 10-01 and 10-02. Also, check IOAI database to ensure that LAPM Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System, if applicable, has been received by IOAI*

*Perform Incurred Cost Audit, if selected*

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**RFP = Request for Proposal**  
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Figure 10-1: A&E Contract Procurement Process Workflow Diagram - continued
10.1.1 General

Introduction
A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. Local agencies requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Definition of an Architectural and Engineering Consultant
23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

Architectural and Engineering Consultants
The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency must be sealed and shall not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations website below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting
treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- **DIR FAQ website:**
  [http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
- **DIR Wage Determination website:**
  [http://www.dir.ca.gov/oprl/DPreWageDetermination.htm](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm)
- **Caltrans Prevailing Wage Interpretive Guidance:**

**Non-A&E Consultants**
Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see Section 10.3 *Non-A&E Contracts* of this chapter.

**Selecting the Project**
The local agency is responsible for selecting and initiating a federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project’s objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

**Subcontracted Services**
The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant’s organization and all associated consultants and subcontractors must be identified in the proposal. If the consultant wishes to use a subcontractor not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C. 106(g)(4) 2 CFR 200.331.

**Organizational and Consultant Conflicts of Interest**
In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4)
A conflict of interest occurs when a public official’s private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

**Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) Requires that:**

- Local agency shall maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements;
- Local agency shall disclose in writing any potential conflict of interest to FHWA.

**Consultants Performing Work on Multiple Phases of Federal-aid Projects**

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.
Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (see Section 10.1.9: Miscellaneous Considerations in this chapter) and retain it in the local agency files.

Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the LAPM Chapter 3: Project Authorization). For state funded projects see Section 10.2: State-Only Funded A&E Contracts and the Local Assistance Program Guidelines (LAPG), Chapter 23: Local Agency State Transportation Improvement Program Projects, for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

10.1.2 Identifying & Defining a Need for Consultants

The need for a consultant is identified by comparing the project’s schedule and objectives with the local agency’s capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.
If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid funds are to be requested for the project segment to be contracted out.

**Appointing the Contract Administrator**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant’s work. The Contract Administrator must be a qualified local agency employee or have staff that is qualified to ensure the consultant’s work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations, and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator’s duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant’s staff and evaluating any requested changes in key personnel;
- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant’s cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the local agency’s primary contact person for the successful consultant;
- Monitors the consultant’s progress and provides direction;
- Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant’s work;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors).

Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see LAPM Chapter 6 Environmental Procedures and Standard Environmental Reference (SER) Chapters 31: Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Chapter 32: Environmental Impact Statement (EIS). Final design shall not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.
### Figure 10-2: Segmenting Consultant Work

#### Specify Products to be Delivered
The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

#### Scope of Consultant Work
The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

#### Non-Discrimination Clause
The Non-Discrimination Clause (Exhibit 10-R: A&E Boilerplate Agreement Language, Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

#### Disadvantaged Business Enterprise (DBE) Participation
When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to Chapter 9: Civil Rights and Disadvantaged Business Enterprises for DBE requirements for A&E Consultant Contracts.
Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency’s negotiating team has a cost comparison of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

**Analogous Estimating:**

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

**Parametric Estimating:**

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

**Bottom-up Estimating:**

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.
For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

**Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.

- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.

- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).

  - To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
    - Must define a general scope of work, complexity, and professional nature of services.
    - Specify a task order procedure the local agency uses to procure project specific work under the contract.
    - No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.
• If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.

  o Specify procurement procedures in the contracts the local agency will use to award/execute task orders among the consultants:
    • Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
    • On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(B)(2). The “backup” option needs to be listed in the respective contracts.

• An example of acceptable contract wording in multiple on-call contracts for the same type of service:

  “Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit “A”, including this Agreement (“CM Services Task Order Contracts”). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts shall not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars ($7,500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency shall send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice shall identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency shall not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant shall not enter into a Task Order that exceeds the NTE Sum.”

**Determining the Project Schedule**

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

• Selecting the consultant;
• Developing the consultant contract;
• Completing the A&E consultant contract audit process;
• Conducting meetings and project reviews.
Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

- Actual Cost-Plus-Fixed Fee (see Exhibit 10-H: Sample Cost Proposal, Example #1);
- Cost Per Unit of Work (see Exhibit 10-H, Example #3);
- Specific Rates of Compensation (see Exhibit 10-H, Example #2);
- Lump Sum (see Exhibit 10-H, Example #1).

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H: Sample Cost Proposal Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, Option 1 in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of
contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3 and Exhibit 10-R, Article V Option 2).

Specified Rates of Compensation

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant’s estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant’s level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #2 and Exhibit 10-R, Article V Option 3.).

Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see Exhibit 10-H: Sample Cost Proposal, Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

10.1.3 A&E Consultant Audit and Review Process

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are
subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

**Applicable Standards**

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between local agencies and Caltrans, (i.e. Master Agreements);
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
  - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See section 10.10 “References” of this Chapter for links to above referenced standards.

**Audit Guidance Available**

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates.
(ICR). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

Local agencies may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5 C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see http://www.nhi.fhwa.dot.gov/default.aspx). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

If consultants desire training on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation. The link to the webinars is available at http://www.dot.ca.gov/audits/ (click on Architectural & Engineering Contracts/General A&E Contract Resources/Other State DOT Training Module). For training and additional information provided by Caltrans Local Assistance, visit Caltrans Local Assistance Blog at http://www.localassistanceblog.com/. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at http://www.fhwa.dot.gov/programadmin/172qa.cfm.

Allowable Costs

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H through 4.

Local agencies are required to apply Caltrans accepted consultant or subconsultant’s ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans. Consultants shall update, on an annual basis, ICRs in accordance with the consultant’s annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.
A consultant’s accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles. IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it shall be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and disallowed costs. For more references, refer to Applicable Standards in this chapter.

Approval or Acceptance of Indirect Cost Rates

Cognizant Letters of Approval

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant’s accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant’s indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant’s and subconsultant’s ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;
The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check IOAI’s website for consultant’s approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI’s website at http://www.dot.ca.gov/hq/audits/. This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may only be applied to A&E contracts with Caltrans or local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than $150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate prior to contract execution using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant’s accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant’s internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.
Local Agencies’ Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (A&E Consultant Financial Document Review Request) and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K “Consultant Certification of Contract Costs and Financial Management System” and Exhibit 10-H “Cost Proposal” for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant’s ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant’s ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR’s are only reviewed for consultants that are being awarded a contract, not consultants on a bench or shortlist.

The Exhibit 10-H “Cost Proposal” includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below $150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: confomance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation
Independent Office of
Independent Office of Audits and Investigations, MS 2
Attention: External Audit Manager
Consultants' Responsibilities (Both prime consultants and subconsultants)
A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For guidance see Training Module for Financial Document Requirements for A&E Contracts with Local Agencies on IOAI’s website http://dot.ca.gov/audits/ (click on Architectural & Engineering Contracts/ A&E Contracts with Local Agencies/ Training Modules).

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "Applicable Standards". Each contracting consultant must ensure its ICR is not combined with any parent company’s or subsidiary’s ICR.

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles. Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html. Prime and sub-consultants must include prevailing wage rate information in the cost proposal (see Exhibit 10-H4 for example) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document the accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work that require payment of prevailing wage rates.
- Explanation of how the firm pays prevailing wage deltas (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third-party plan, etc.)
- Accounting method used for prevailing wage delta base costs.
- Accounting method used for prevailing wage delta fringe costs.

For guidance see Caltrans’ Prevailing Wage Interpretive Guidance and webinar on IOAI’s website www.dot.ca.gov/audits.

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant’s labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant’s employees.
The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

Independent Office of Audits and Investigations' Responsibilities

After IOAI receives a consultant's complete financial document packet (per Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

Audits and Reviews to be Performed

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

Indirect Cost Rate Audits

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA
adequately considered the auditee’s compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit, auditors will review a consultant’s financial management system and contract cost proposal to determine if:

- The consultants’ accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

Audit Findings and Review Deficiencies

If a consultant’s ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in LAPM Chapter 20: Deficiencies and Sanctions if the state or federal government determines that any reimbursements to the
Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

<table>
<thead>
<tr>
<th>Description</th>
<th>General Ledger Balance</th>
<th>Unallowable</th>
<th>FAR Reference</th>
<th>Total Proposed</th>
<th>Home Office</th>
<th>Field Office</th>
</tr>
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<td>($934,568)</td>
<td>(1)(15)</td>
<td>$122,522,221</td>
<td>$85,765,555</td>
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<td>Fringe Benefits</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Vacation/Paid Leaves</td>
<td>$17,283,950</td>
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<td></td>
<td>$17,283,950</td>
<td>$12,098,765</td>
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<td>Payroll Taxes</td>
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<td>($30,617)</td>
<td>(15)</td>
<td>$1,500,247</td>
<td>$1,050,173</td>
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<td>Medical Insurance</td>
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<td>401K Match</td>
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<td></td>
<td>$4,938,272</td>
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<td>Incentives and Bonus</td>
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<td>(2)</td>
<td>$12,185,186</td>
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<td>Other Employee Benefits</td>
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<td>($553,433)</td>
<td>(3)</td>
<td>$1,961,847</td>
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<td>Total Fringe Benefits</td>
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<td></td>
<td>$48,733,700</td>
<td>$34,113,590</td>
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<td>General &amp; Administrative Overhead</td>
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<td>Indirect Overhead Labor</td>
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<td>($4,452,541)</td>
<td>(1)(2)(4)(15)</td>
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<td>Purchased Labor/Subconsultants</td>
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<td>($22,433,019)</td>
<td>(5)</td>
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<td>$ -</td>
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<td>Office Rent</td>
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<td>($987,654)</td>
<td>(6)</td>
<td>$11,358,025</td>
<td>$11,038,025</td>
<td>$320,000</td>
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<td>Supplies &amp; Utilities</td>
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<td></td>
<td>$5,753,086</td>
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<td>Postage and Shipping</td>
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<td>Equipment and Maintenance</td>
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<td>(7)</td>
<td>$4,856,791</td>
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<td>Interest</td>
<td>$123,456</td>
<td>($123,456)</td>
<td>(8)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Dues and Subscription</td>
<td>$123,456</td>
<td>($123,456)</td>
<td>(9)</td>
<td>$111,111</td>
<td>$77,778</td>
<td>$33,333</td>
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<td>Advertising &amp; Marketing</td>
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<td>(10)</td>
<td>$361,728</td>
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<td>Vehicles</td>
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<td>($147,403)</td>
<td>(5)(11)(14)</td>
<td>$5,748,720</td>
<td>$4,024,104</td>
<td>$1,724,616</td>
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<td>($12,345)</td>
<td>(12)</td>
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<td>Legal and Accounting Services</td>
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<td>($222,815)</td>
<td>(13)</td>
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<td>Fines and Penalties</td>
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<td>($80,000)</td>
<td>(16)</td>
<td>$ -</td>
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<td>Total General &amp; Admin. Overhead</td>
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<td>($29,541,478)</td>
<td></td>
<td>$105,847,517</td>
<td>$95,898,280</td>
<td>$9,949,237</td>
</tr>
</tbody>
</table>
FAR References:

2. FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
4. FAR 31.201-2: Administrative staff costs billed to projects/clients.
5. FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
6. FAR 31.205-35 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
7. FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
8. FAR 31.205-20: Interest and other financial costs not allowable.
10. FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
11. FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
12. FAR 31-205-3: Bad debts and collection costs.
13. FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
14. FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
15. FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
16. FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

This section outlines the audit and review process for A&E contracts that at any time use federal and/or state funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

10.1.4 Consultant Selection Methods

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:
- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.
The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

Beginning with Section 10.1.5: Consultant Selection Using the One-Step RFP Method, each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in Section 10.1.2: Identifying & Defining a Need for Consultants. This method requires substantially more work and time than the other two methods described above.
Figure 16-4: Consultant Selection Flowchart
10.1.5 Consultant Selection Using the One-Step RFP Method

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project’s functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.
Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See Exhibit 10-I: Sample Cost Proposal (Example 3) for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-II: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k), 2 CFR 172.5(c)(18).
The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team – complete for prime consultant and all key subconsultants;
- Key personnel names and classifications – key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant’s project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency’s or other widely used websites are all acceptable methods of solicitation.
To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

**Issue/Publish RFP**

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

**Conduct Proposer’s Conference or Answer Written Questions**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer’s conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer’s conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer’s conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

**Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172(a)(1)(iv) (D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.
Develop Final Ranking and Notify Consultants of Results
The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Negotiate Contract with Top-Ranked Consultant
Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System of Costs and Financial Management System and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist, whichever is applicable (see Section 10.1.3: A&E Consultant Audit and Review Process) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the local agency's written policies and procedures.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor
costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process in this chapter). Local agency Contract Administrator ensures that all required documentation are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
- Hours, level of effort by task and/or classification.

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

10.1.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.
Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project’s functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
• Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal for sample cost proposal formats;

• Contract audit and review process requirements (see Section 10.1.3: A&E Consultant Audit and Review Process);

• Statement of Qualification (SOQ) format and required content to be submitted;

• Method and criteria and weights for selection;

• A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;

• Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement; Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

• Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;

• Staff resumes;

• Related projects that key personnel have worked on;

• Qualifications/experience of the firm;

• Organizational chart;

• Forecast or Schedule of work;

• Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;

• References.

Financial Management and Accounting System Requirements

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.
Advertise for Consultants
The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

Issue/Publish RFQ
The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

Receive/Evaluate Statements of Qualifications and Develop Shortlist
The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.
The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

**Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only
information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

**Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

**Conduct Scoping Meeting**

The Contract Administrator meets with the first-ranked consultant’s project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

**Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant’s cost proposal must follow the same format as the prime consultant’s cost proposal.

**Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as *Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System* and *Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist*, whichever
applicable (see Section 10.1.3: A&E Consultant Audit and Review Process) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency’s confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant’s cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with local agency’s written policies and procedures.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentation to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
• Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist), and receive Caltrans IOAI’s Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C is not required for non-A&E consultant contracts.

10.1.7 Consultant Selection Using the Two-Step RFQ/RFP Method

Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a multiphase process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and an RFP is then provided to three or more of the most highly qualified consultants.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One
Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured thru subsequent competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

Local agencies may also use this method to develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise or to create a bench list of evaluated and ranked consultants. The pre-qualified data file or interest list can be updated annually or every two years. This list contains minimum qualifications and has not gone through the evaluation process. The pre-qualification list must be maintained by the agency.

The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task. The evaluation can include: availability of personnel, staff capabilities, DBE (10% or less of overall score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

**Categorize work**

Descriptions of the categories of work, deliverables and the minimum qualification standards for each category must be clearly identified.

The local agency may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal-aid Highway Project Development Support Services
Establish Minimum Qualifications

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm’s key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1)
- Professional references by the firm with the local agency
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices.

Issue RFQ

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and websites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included.
information should be the basis for evaluating and placing a consulting firm on a general prequalification list.

Federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain prequalification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

Set-Up Evaluation Process

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a per-qualified list. Whether the Local agency has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The prequalification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T.
Evaluate Qualifications and Add Firm to List

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

Maintain List

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm’s organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency’s website. Firms can also apply to be on the list through the agency website for ease of operation.

Issue RFP to Pre-Qualified Consultants on List

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information
Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (LAPM Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (shortlisted), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract
Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant’s cost proposal must follow the same format as the prime consultant’s cost proposal.

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, whichever applicable (see Section 10.1.3: A&E Consultant Audit and Review Process), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant’s cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process). The local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
• Other Direct Cost items, and profit or fee

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

10.1.8 Completing the Project

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans I/OAI that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. Sample contract language and format have been included as Exhibit 10-R: A&E Boilerplate Agreement Language.

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the local agency to verify that:

• Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
• Work activities and schedules are consistent with the nature and scope of the project;
• DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal;
• Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist and all supporting documents, if applicable (contracts above $150,000), have been submitted to Caltrans I/OAI;
• If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;

• Exhibit 10-C: A&E Consultant Contract Reviewers Checklist must be used to ensure that required documentation has been provided;

• A cost proposal (see Exhibit 10-H: Sample Cost Proposal), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant’s organization:

• Is qualified to perform the services required;

• Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;

• Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.

• Has an adequate financial management system as required by the applicable federal regulations.

• Is not disbarred or suspended from state or federally funded contracts. Per 23 CFR 172.7(b)(3) “A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency and shall be retained for a three-year period after processing of the final voucher by FHWA.

**Execute Contract and Issue Notice to Proceed to Consultant**
The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for
consultant costs incurred prior to the execution of the consultant contract. All executed contracts shall have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date.

**Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - DIR FAQ website: [http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website: [http://www.dir.ca.gov/oprl/DPreWageDetermination.htm](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm)
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices,
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see Exhibit 10-5: Consultant Performance Evaluation).

**Substitution of Consultant Personnel and Subconsultants**

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written
approval from the local agency. Refer to LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise and Title 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

**Invoicing (or Progress Payments)**

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see LAPM Chapter 3: Project Authorization) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant’s invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- *Exhibit 10-O1: Consultant Proposal DBE Commitment*
- *Exhibit 10-O2: Consultant Contract DBE Information*

DLAE must confirm that the local agency has submitted copies of *Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System* (for Prime and Subconsultants) to Caltrans IOAI and received acceptance of *Exhibit 10-C: Consultant Contract Reviewers Checklist* from Caltrans.

The local agency is to follow the procedures given in LAPM Chapter 5: Invoicing, to obtain reimbursement of federal or state funds.

**Contract Amendments**

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see Q&As at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.
A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and cannot include any new work. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments shall be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency shall either procure the services under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. Section 10.1.3: A&E Consultant Audit and Review Process of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments shall incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit Exhibit 10-C: Consultant Contract Reviewers Checklist to aeoversight@dot.ca.gov for review completing Section D for amendments.

Performance Evaluation
Pursuant to 23 CFR §172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See Exhibit 10-S: Consultant Performance Evaluation for a suggested format for use by the local agency.

Project Records
Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part
These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder’s list;
- Documentation of DBE participation (including Exhibit 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment);
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) for contracts over $150,000 or more;
- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist) for contracts over $150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R: A&E Boilerplate Agreement Language and Exhibit 10-H: Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see Exhibit 10-S: Consultant Performance Evaluation);
- Consultant contract checklists (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist);
• Accounting records documenting compliance with State and federal administrative requirements;

• Certifications and Conflict of Interest forms (Exhibit 10-T: Conflict of Interest & Confidentiality Statement), all personnel involved in the procurement of the agreement should complete Exhibit 10-T Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement and Exhibit 10-Q: Disclosure of Lobbying Activities, as appropriate). Exhibit 10-Q is included in the solicitation and shall be completed if the consultant needs to disclose any lobbying activities.

Retention Clauses
At the option of the local agency, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXI).

Review of Local Agency Actions
Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

Exhibit 10-C: A&E Consultant Contract Reviewers Checklist is to be completed and signed. A copy shall be emailed to Caltrans at aeoversight@dot.ca.gov prior to contract award for acceptance. This acceptance of Exhibit 10-C must be retained in the local agency project files.

10.1.9 MISCELLANEOUS CONSIDERATIONS

Agreements with Other Governmental Agencies
Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

Small Purchase Contracts
Contracts that are less than $250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is not a recognized small purchase procedure. For federal contracts that are less than $250,000 and are not anticipated to exceed this amount, the agency shall use the State-Only Funded A&E Contracts: Section 10.2. If the contract is anticipated to exceed $250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure shall not exceed $250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements shall not be broken down into smaller components to
permit the use of small purchase procedure. DBE requirements apply for all federally funded projects.

**Noncompetitive Negotiated Contracts (Sole-Source)**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see *Exhibit 12-F: Cost-Effectiveness/Public Interest Finding*).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans’ or FHWA’s review.

A Public Interest Finding (see *Exhibit 12-F: Cost-Effectiveness/Public Interest Finding*) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects.

**Personal Services Contracts**

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:
- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

**Retaining a Consultant as an Agency Engineer or in Management Support Role**

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
• For a federal-aid project, completion of Exhibit 10-T: Conflict of Interest & Confidentiality Statement by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;

• Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;

• For a federal-aid project, a local agency consultant in a management support role shall not:
  o Participate in, or exercise authority over the A&E selection process, if that consultant’s firm is one of the proposing firms, or subconsultant to a proposing firm;
  o Participate in, or exercise authority over management of work performed by the consultant’s firm, or to a consultant’s firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  o Apply for or receive reimbursement of federal-aid funds for the local agency’s federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  o Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant’s contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

• Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

• Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.

- Once the local agency receives FHWA’s written response, the local agency may need to revise the documents reflecting FHWA’s opinions and can proceed with the RFQ.

- After consultant selection, the local agency shall submit the completed Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA’s approved Exhibit 10-U via email.

![Diagram](image-url)

Figure 10-5: Consultant in a Management Support Role Flowchart
Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant’s contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant’s construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter’s requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

10.1.10 Program Management

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency shall adopt Caltrans Local Assistance Chapter 10: Consultant Selection. Local agencies are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant’s work;

- Monitoring the consultant’s work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant’s performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

An example resolution is located at:
http://www.dot.ca.gov/hq/LocalPrograms/AE/2018/P&P-Adoption-Resolution.doc

10.1.11 REFERENCES

- **23 CFR, Part 172**
  Administration of Engineering and Design Related Service Contracts
  http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3

- **40 USC, Section 1104**

- **41 CFR**
  Public Contracts and Property Management
  http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl

- **41 USC**
  Public Contracts
  http://law.ouoale.com/uscode/41/index.html

- **23 USC**
  Letting of Contracts

- **48 CFR, Chapter 1, Part 15.404**
  https://www.acquisition.gov/far/html/FARTOCP15.html

- **48 CFR, Chapter 1, Part 31**
  https://www.acquisition.gov/far/html/FARTOCP15.html

- **Title 48, Part 16 – Types of Contracts**

- **48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts**

- **48 CFR 31.201-3**

- **48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900**
- **2 CFR Part 200**
  [http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdd5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdd5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

- **49 CFR. Part 26**
  Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
  [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

- **American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide**
  [http://audit.transportation.org/Pages/default.aspx](http://audit.transportation.org/Pages/default.aspx)

- **Caltrans Division of Procurement and Contracts Website**

- **California Labor Code, Section 1775**

- **Government Auditing Standards (GAS) issued by the United States Government Accountability Office**

- **Government Code Sections 4525 through 4529.5**
  [http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)

- **OMB Circular A-110**
  Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
  [https://www.whitehouse.gov/omb/circulars_a110](https://www.whitehouse.gov/omb/circulars_a110)

- **Standard Environmental Reference (SER)**
  [http://www.dot.ca.gov/sr](http://www.dot.ca.gov/sr)
10.2: STATE-ONLY FUNDED A&E CONTRACTS

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10.2.1 General

Local Agencies are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the local agency shall use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.


Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: A&E Boilerplate Agreement Language contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow LAPM Section 10.1.3 A&E Consultant Audit and Review Process.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: Retaining a Consultant as an Agency Engineer or in a Management Support Role http://www.dot.ca.gov/hq/LocalPrograms/lan/LAPM/ch10.pdf.

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference LAPM Section 10.3: Non-A&E Contracts.

Reference: California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.

10.2.2 Definition of A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.
Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

Reference: *California Government Code §4527*

### 10.2.3 Minimum Audit Requirements

#### A. Written Procedures
Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

Reference: *California Government Code §4526*

#### B. Conflict of Interest
The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state funded contracts, including the prevention of conflicts of interest.

References:
*California Government Code §4526*
*California Government Code §1090*
*California Government Code §4529.12*

#### C. Records
Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

References:
*California Government Code §4529.14*
*California Government Code §4006*

#### D. Full & Open competition
All A&E contracts shall be procured through a qualifications based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference.

References:
*California Government Code §4526*
*California Government Code §4527*
E. Selection Basis
Selection of a firm shall be based on qualifications and the order of ranked preference.

References:
California Government Code §4526
California Government Code §4527

F. Publication
Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: California Government Code §4527

G. Solicitation
The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: California Government Code §4527

H. Cost Analysis
An independent cost comparison to the consultant’s cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: California Government Code §4528

I. Negotiations
Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: California Government Code §4528

J. Audit and Review Process
A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: A&E Consultant Audit and Review Process.

http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf

Reference: California Government Code §4529.14

K. Exhibit 10-C.2: State-Only Funded A&E Contracts
Exhibit 10-C.2: State-Only Funded A&E Consultant Contract Reviewers Checklist must be sent to aeoversight@dot.ca.gov for review prior to contract award.
CA Government Code References

California GOV §1090
(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California GOV §4006
Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

California GOV §4525
For purposes of this chapter, the following terms have the following meaning:

(a) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) “State agency head” means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) “Local agency head” means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) “Architectural, landscape architectural, engineering, environmental, and land surveying services” includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) “Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) “Environmental services” means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. “Environmental services” also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

California GOV §4526
Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public.
agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

**California GOV §4527**

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

**California GOV §4528**

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

**California GOV §4529**

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.
California GOV §4329.12
All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

California GOV §4329.14
Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

California GOV §4329.20
This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

Federal Highway Administration Memorandum 2 CFR 200 Implementation Guidance
12/4/2014

Attachment A: FHWA 2 CFR 200 Uniform Guidance - Questions and Answers
Question 21: “Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?”

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.
Figure 10.2 State-Only Funded Procurement Criteria


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*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.
10.3: NON-A&E CONTRACTS

SCOPE

This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although local agencies are required to follow 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for all contracts, the Procurement Standards section §200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency shall designate one person within the local agency as a contract manager.

(PCC 10348.5)

DETERMINING NON-A&E

After identifying that there is a need for consulting services, the local agency shall determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public’s best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design related services are considered non-A&E. The services must not be included in Section 10.2.2 Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

EXAMPLE OF DETERMINING NON-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the local agency can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of-Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)
- Non-Infrastructure
INTELLIGENT TRANSPORTATION SYSTEM (ITS) PROJECTS

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, fund the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact aeoversight@dot.ca.gov for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to LAPG, Chapter 13 LAPG Chapter 13: Intelligent Transportation Systems.

NON-INFRASTRUCTURE PROJECTS

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to LAPM Chapter 3: Project Authorization.
GOVERNING REGULATIONS AND CODES FOR NON-A&E

PROCUREMENT OF NON-A&E CONSULTANT CONTRACTS
All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. Local agency must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) shall not limit the competition directly or indirectly to any one consultant. The RFP must be publicized and all evaluation factors and their relative importance identified. (PCC 10339)
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed. (PCC 10329)
3. Local agency shall secure at least three competitive proposals for each contract. (PCC 10340)
   When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.
4. No proposals shall be considered which have not been received at the place, and prior to the closing time as stated in the RFP. (PCC 10344(a))
5. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

RFP BASIC REQUIREMENTS
A. There are two general types of consulting service contract solicitations:
   B. Request for Proposal using Cost only
   C. Request for Proposal using Cost and Qualifications

The local agency must include the following in the request for proposal:

A. A clear, precise description of the work to be performed or services to be provided.
B. Description of the format that proposals shall follow and the elements they shall contain
C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
D. The date the proposals are due.
E. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

(PCC 10344)

**ADDITIONAL REQUIREMENTS AND EVALUATION CRITERIA**

**Additional Requirements for Request for Proposal using Cost only**

A. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.

B. Local agency shall determine those that meet the format requirements and the standards specified in the request for proposal.

C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

**Additional Requirements for Request for Proposal using Cost and Qualifications**

A. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.

B. Local agency shall determine those that meet the format requirements specified in the RFP.

C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.

D. The non-A&E contract shall be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant’s proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the Local Assistance website at [http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/RFP-Example-Non-AE.docx](http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/RFP-Example-Non-AE.docx) and may be modified.

Submission of *Exhibit 10-C Consultant Contract Reviewers Checklist* to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

**CONSULTANT’S PROPOSAL**

The consultant’s proposal should include the following information:
- Consultant Project Manager - qualifications, roles and responsibilities.
- Methodology - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- Workplan and Work Schedule - the technical proposal should include activities and tasks, and their delivery schedule.
- Personnel - List of personnel who will be working on the project, and their resumes.
- Facilities and resources (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- Sub-contracts - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- References - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

**Cost Proposal Worksheet**

The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

**DBE Consideration**

DBE consideration is required on all federal-aid funded contracts including non-A&E.

**Administrative Requirements**

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant’s questions shall be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.
Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

**ORAL PRESENTATIONS OPTIONAL**

When oral presentations are required by the local agency, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

**COST-EFFECTIVE/PUBLIC INTEREST FINDING**

A minimum of three proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract shall document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

**(PCC 10340(c))**

**PROTEST/APPEALS/REINSTATEMENT PROCEDURES**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defend its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.
STAFF REPORT

AGENDA ITEM: Adopt three Resolutions required by the State Water Resources Control Board as part of the DWSRF application for the City of San Joaquin Phase 2 Water System Improvements Project

MEETING DATE: June 4, 2019

PREPARED BY: Nick Fontaine, Gouveia Engineering, Inc.

REVIEWED BY: Elizabeth Nunez, City Manager

RECOMMENDATION:
City Council to adopt three resolutions required by the State Water Resources Control Board (SWRCB) as part of the Drinking Water State Revolving Fund (DWSRF) Application.

BACKGROUND:
The City is applying to the SWRCB DWSRF to fund water distribution system improvements within the City of San Joaquin. The SWRCB requires that the applicant’s Governing Board adopt three resolutions. The resolutions are as follows:

- A Resolution authorizing the City Manager to sign and file a financial assistance application to the DWSRF for the design and construction of water distribution system improvements within the City of San Joaquin.
- A resolution authorizing the City Manager to sign the financing agreement, amendments, and certifications for funding, to approve claims for reimbursement, to execute budget and expenditure summary, to sign final release form and to sign certification of the project completion, and pledging and dedicating net water revenues to pay DWSRF financing.
- A Resolution stating the Board’s intention to be reimbursed for expenditures incurred ahead of the approval of the disbursement of DWSRF construction funds.

DISCUSSION:
The adoption of these three resolutions is a requirement to complete the DWSRF Construction application. Once the application is submitted the SWRCB will determine the project’s eligibility for construction funding.

Once approved, the SWRCB will begin drafting a financing agreement which may take up to a year to complete. SWRCB staff have not indicated how much of the project will be grant funded. However, the current intended use plan for the DWSRF indicates that the City should be eligible for up to $5 million in grant. If there is a loan component, the City will reimburse the SWRCB using net revenues from the water fund.

The City has previously applied for DWSRF funding for Phase 1 Improvements including the construction a manganese removal system at Well No. 5, a raw water pipeline from Well No. 3 to Well No. 5, and various waterline improvements.
The Phase 2 Water System Improvements include constructing Well No. 6, a manganese removal system at Well No. 6, and a raw water pipeline from Well No. 4 to Well No. 6.

**FISCAL IMPACT:**

The adoption of these Resolutions has no fiscal impact.

**ATTACHMENTS:**


2. Resolution No. 2019-24 titled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN AUTHORIZING THE CITY MANAGER TO SIGN FINANCING AGREEMENT, AMENDMENT, AND CERTIFICATIONS FOR FUNDING UNDER THE DRINKING WATER STATE REVOLVING FUND (DWSRF); AUTHORIZING CITY MANAGER TO APPROVE CLAIMS FOR REIMBURSEMENT; AUTHORIZING CITY MANAGER TO EXECUTE BUDGET AND EXPENDITURE SUMMARY; AUTHORIZING CITY MANAGER TO SIGN THE FINAL RELEASE FORM AND THE CITY MANAGER TO SIGN THE CERTIFICATION OF PROJECT COMPLETION; AND PLEDGING AND DEDICATING NET WATER REVENUES TOWARDS PAYMENT OF DWSRF FINANCING FOR THE CITY OF SAN JOAQUIN PHASE 2 WATER SYSTEM IMPROVEMENTS PROJECT."

RESOLUTION NO. 2019-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
AUTHORIZING THE CITY MANAGER TO SIGN AND FILE A FINANCIAL
ASSISTANCE APPLICATION TO THE STATE DRINKING WATER STATE
REVOLVING FUND (DWSRF) FOR THE CONSTRUCTION OF THE CITY OF SAN
JOAQUIN PHASE 2 WATER SYSTEM IMPROVEMENTS PROJECT

WHEREAS, the City of San Joaquin (City) has the authority to construct, operate, and maintain it
water system; and

WHEREAS, the City desires to enhance the provision and protection of the drinking water
supplied to the consumers of the City of San Joaquin;

WHEREAS, the Phase 2 Water System Improvements include constructing Well No. 6, a
manganese removal system at Well No. 6, and a raw water pipeline from Well No. 4 to Well No. 6;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Joaquin hereby
resolves as follows:

1. The City Manager (the “Authorized Representative”) or designee is hereby authorized and directed to
sign and file, for and on behalf of the Entity, a Financial Assistance Application for a financing
agreement from the State Water Resources Control Board for the construction of the Phase 2 Water
System Improvements Project (the “Project”).

2. This Authorized Representative, or his/her designee, is designated to provide the assurances,
certifications, and commitments required for the financial assistance application, including executing a
financial assistance agreement from the State Water Resources Control Board and any amendments or
changes thereto.

3. The Authorized Representative, or his/her designee, is designated to represent the Entity in carrying
out the Entity’s responsibilities under the financing agreement, including certifying disbursement
requests on behalf of the Entity and compliance with applicable state and federal laws.

Passed and adopted this 4th day of June, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_______________________________
Julia Hernandez, Mayor

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular
Meeting of the City Council of the City of San Joaquin this 4th day of June, 2019.

_______________________________
Lupe Estrada, City Clerk
RESOLUTION NO. 2019-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN AUTHORIZING THE CITY MANAGER TO SIGN FINANCING AGREEMENT, AMENDMENT, AND CERTIFICATIONS FOR FUNDING UNDER THE DRINKING WATER STATE REVOLVING FUND (DWSRF); AUTHORIZING CITY MANAGER TO APPROVE CLAIMS FOR REIMBURSEMENT; AUTHORIZING CITY MANAGER TO EXECUTE BUDGET AND EXPENDITURE SUMMARY; AUTHORIZING CITY MANAGER TO SIGN THE FINAL RELEASE FORM AND CITY MANAGER TO SIGN THE CERTIFICATION OF PROJECT COMPLETION; AND PLEDGING AND DEDICATING NET WATER REVENUES TOWARDS PAYMENT OF DWSRF FINANCING FOR THE CITY OF SAN JOAQUIN PHASE 2 WATER SYSTEM IMPROVEMENTS.

WHEREAS, the City of San Joaquin Well #4 and Well #6 produce water with a manganese concentration in excess of the recommended maximum contaminant level (MCL) of 50μg/l; and

WHEREAS, the City of San Joaquin is seeking financing from the State Water Resources Control Board for the construction of the San Joaquin Phase 2 Water System Improvements Project (“Project”);

WHEREAS, the Phase 2 Water System Improvements include constructing Well No. 6, a manganese removal system at Well No. 6, and a raw water pipeline from Well No. 4 to Well No. 6.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Joaquin hereby resolves as follows:

1. The City Manager is hereby authorized and directed to sign and file, for and on behalf of the City of San Joaquin a financial assistance application for a financing agreement from the State Water Resources Control Board for the Project;

2. The City Manager or designee is hereby authorized to sign the DWSRF program financing agreement for the Project and any amendments thereto, and provide the assurances, certifications and commitments required therefor;

3. The City Manager or designee is hereby authorized to represent the City of San Joaquin is carrying out the City of San Joaquin’s responsibilities under the financing agreement, including approving and submitting disbursement requests (including Claims for Reimbursement) or other required documentation, compliance with applicable state and federal laws, and making any other necessary certifications;

4. The City of San Joaquin does hereby dedicate and pledge its net water revenues and its water enterprise fund to payment of the DWSRF financing for the Project. The City of San Joaquin commits to collecting such revenues and maintaining such fund(s) throughout the term of such financing and until the City of San Joaquin has satisfied its repayment obligation thereunder unless modification or change is approved in writing by the State Water Resources Control Board. So long as the financing agreement(s) are outstanding, the City of San Joaquin pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board on the foregoing fund(s) and revenue(s) without any further action necessary. So long as the financing agreement(s) are outstanding, the City of San Joaquin commits to maintaining the fund(s) and revenue(s) at levels sufficient to meet its obligations under the financing agreement(s). If for any reason, the said source of revenues proves insufficient to satisfy the debt service of the DWSRF obligation, sufficient funds shall be raised through increased water rates, user charges, or assessments or any other legal means available to meet the DWSRF obligation and to operate and maintain the project; and
5. The authority granted hereunder shall be deemed retroactive. All acts authorized hereunder and performed prior to the date of this Resolution are hereby ratified and affirmed. The State Water Resources Control Board is authorized to rely upon this Resolution until written notice to the contrary, executed by each of the undersigned, is received by the State Water Resources Control Board. The State Water Resources Control Board shall be entitled to act in reliance upon the matters contained herein, notwithstanding anything to the contrary contained in the formation documents of the City of San Joaquin or in any other document.

Passed and adopted this 4th day of June, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________
Julia Hernandez, Mayor

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular Meeting of the City Council of the City of San Joaquin this 4th day of June, 2019.

______________________________
Diana Brooks, City Clerk
RESOLUTION NO. 2019-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
STATING ITS INTENTION TO BE REIMBURSED FOR EXPENDITURES INCURRED
AHEAD OF THE APPROVAL OF THE DISBURSEMENT OF DRINKING WATER
STATE REVOLVING FUND (DWSRF) CONSTRUCTION FUNDS FROM THE STATE
WATER RESOURCES CONTROL BOARD FOR THE CITY OF SAN JOAQUIN
PHASE 2 WATER SYSTEM IMPROVEMENTS PROJECT.

WHEREAS, the City of San Joaquin (the "Agency") desires to finance the costs of constructing
and/or reconstructing certain public facilities and improvements relating to its water system, including
certain treatment facilities, pipelines and other infrastructure (the "Project"); and

WHEREAS, the Agency intends to finance the construction and/or reconstruction of the Project
or portions of the Project with moneys ("Project Funds") provided by the State of California, acting by and
through the State Water Resources Control Board (State Water Board); and

WHEREAS, the State Water Board may fund the Project Funds with proceeds from the sale of
obligations the interest upon which is excluded from gross income for federal income tax purposes (the
"Obligations"), and

WHEREAS, prior to either the issuance of the Obligations or the approval by the State Water
Board of the Project Funds the Agency desires to incur certain capital expenditures (the "Expenditures")
with respect to the Project from available moneys of the Agency; and

WHEREAS, the Agency has determined that those moneys to be advanced on and after the date
hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse
the Agency for the Expenditures from the proceeds of the Obligations;

WHEREAS, the Phase 2 Water System Improvements include constructing Well No. 6, a
manganese removal system at Well No. 6, and a raw water pipeline from Well No. 4 to Well No. 6.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Joaquin
hereby resolves as follows:

SECTION 1. The Agency hereby states its intention and reasonably expects to reimburse Expenditures paid
prior to the issuance of the Obligations or the approval by the State Water Board of the Project Funds.

SECTION 2. The reasonably expected maximum principal amount of the Project Funds is $5,000,000.

SECTION 3. This resolution is being adopted no later than 60 days after the date on which the Agency will
expend moneys for the construction portion of the Project costs to be reimbursed with Project Funds.

SECTION 4. Each Agency expenditure will be of a type properly chargeable to a capital account under
general federal income tax principles.

SECTION 5. To the best of our knowledge, this Agency is not aware of the previous adoption of official
intents by the Agency that have been made as a matter of course for the purpose of reimbursing expenditures
and for which tax-exempt obligations have not been issued.

SECTION 6. This resolution is adopted as official intent of the Agency in order to comply with Treasury
Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification
for reimbursement of Project costs.
SECTION 7. All the recitals in this Resolution are true and correct and this Agency so finds, determines and represents.

Passed and adopted this 4th day of June, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

__________________________________________
Julia Hernandez, Mayor

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular Meeting of the City Council of the City of San Joaquin this 4th day of June, 2019.

__________________________________________
Lupe Estrada, City Clerk
STAFF REPORT

TO: San Joaquin City Council
FROM: Gouveia Engineering, Inc.
DATE: June 4, 2019
SUBJECT: Bid Acceptance – City of San Joaquin 2019 Ninth Street Rehabilitation Project

BACKGROUND

On May 7, 2019, the City Council approved the expenditure of $400,000 on various street projects including the 2019 Ninth Street Rehabilitation Project. The funds will be provided from the Measure C, Gas Tax, LTF/TDA, or SB 1 RMRA account.

The major work consists of pulverizing approximately 28,320 square feet of an existing asphalt concrete road, grading and compacting the pulverized material, loading and exporting excess pulverized material, and repaving the road with 3 inches of asphalt concrete in the City of San Joaquin.

Using an informal bid process pursuant to the Public Contract Code and City of San Joaquin Municipal Code, City staff issued a Request for Proposals on May 17, 2019 and the City received a total of four (4) bids on May 29, 2019.

DISCUSSION

The low bid was submitted by Machado and Sons Construction, Inc. in the amount of $95,696.00. The Bid results are listed below:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machado and Sons Construction, Inc.</td>
<td>$95,696.00</td>
</tr>
<tr>
<td>Rolfe Construction Company</td>
<td>$106,828.00</td>
</tr>
<tr>
<td>AJ Excavation, Inc.</td>
<td>$107,000.00</td>
</tr>
<tr>
<td>American Paving Company</td>
<td>$136,864.00</td>
</tr>
</tbody>
</table>

FISCAL IMPACT

The construction costs for the project will be paid for from the budgeted Measure C, Gas Tax, LTF/TDA, or SB 1 RMRA funds.

RECOMMENDATION

Staff recommends that the Council accept the low bid from Machado and Sons for $95,696.00 and authorize the City Manager to sign the Agreement on behalf of the City of San Joaquin.

ATTACHMENTS

1. Resolution 2019-26
2. Abstract of Bids
ABSTRACT OF BIDS FOR
CITY OF SAN JOAQUIN
2019 Ninth Street Rehabilitation Project
Bid Opening: May 29, 2019 at 4:00 p.m.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Item Description</th>
<th>Quantity and Unit</th>
<th>Unit Price</th>
<th>Amount</th>
<th>Unit Price</th>
<th>Amount</th>
<th>Unit Price</th>
<th>Amount</th>
<th>Unit Price</th>
<th>Amount</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization</td>
<td>1 LS</td>
<td>3,800.00</td>
<td>3,800.00</td>
<td>7,020.00</td>
<td>7,020.00</td>
<td>10,090.00</td>
<td>10,090.00</td>
<td>34,920.00</td>
<td>34,920.00</td>
<td>34,920.00</td>
<td>34,920.00</td>
</tr>
<tr>
<td>2</td>
<td>Pulverize and Grade Pavement</td>
<td>28,320 SF</td>
<td>1.05</td>
<td>29,736.00</td>
<td>0.40</td>
<td>11,338.00</td>
<td>1.25</td>
<td>35,400.00</td>
<td>1.20</td>
<td>33,984.00</td>
<td>1.20</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Furnish and Place Asphalt Concrete</td>
<td>560 TN</td>
<td>111.00</td>
<td>62,160.00</td>
<td>113.00</td>
<td>88,480.00</td>
<td>110.00</td>
<td>61,600.00</td>
<td>123.00</td>
<td>68,880.00</td>
<td>123.00</td>
<td></td>
</tr>
</tbody>
</table>

**BID TOTAL**

$95,696.00 $106,828.00 $107,000.00 $136,854.00
RESOLUTION No. 2019-26

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN
ACCEPTING BID AND AWARDING CONTRACT TO MACHADO AND SONS
CONSTRUCTION, INC.

WHEREAS, the City of San Joaquin requested informal bids for the construction of the 2019 Ninth Street Rehabilitation Project pursuant to the California Public Contract Code and the City of San Joaquin Municipal Code; and

WHEREAS, the request for informal bids was issued by City staff on May 17, 2019; and

WHEREAS, the project will of pulverizing approximately 28,320 square feet of an existing asphalt concrete road, grading and compacting the pulverized material, loading and exporting excess pulverized material, and repaving the road with 3 inches of asphalt concrete in the City of San Joaquin; and

WHEREAS, the following bids for the project were received on May 29, 2019:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machado and Sons Construction, Inc.</td>
<td>$95,696.00</td>
</tr>
<tr>
<td>Rolfe Construction Company</td>
<td>$106,828.00</td>
</tr>
<tr>
<td>AJ Excavation, Inc.</td>
<td>$107,000.00</td>
</tr>
<tr>
<td>American Paving Company</td>
<td>$136,864.00</td>
</tr>
</tbody>
</table>

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN RESOLVES upon the recommendation of Staff that the 2019 NINTH STREET REHABILITATION PROJECT be awarded to: Machado and Sons Construction, Inc. in the amount of Ninety-Five Thousand, Six Hundred Ninety-Six Dollars and no Cents ($95,696.00).

The foregoing resolution was adopted at a regular meeting of the City Council of the City of San Joaquin the 4th day of June, 2019 and passed at said meeting by the following vote:

AYES:
NOTES:
ABSENT:
ABSTAIN:
The foregoing resolution is hereby approved.

______________________________
Julia Hernandez, Mayor

ATTEST:

I, Lupe Estrada, City Clerk of the City of San Joaquin, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said City Council, held at the San Joaquin Council Chambers on June 4, 2019, by the following vote:

______________________________
Lupe Estrada, City Clerk