



February 13, 2020

**RE: MULTIMODAL TRANSIT CENTER TEMPORARY PLATFORM PROJECT  
REQUEST FOR PROPOSAL**

Dear Consultant:

The City is re-distributing a Request for Proposal (RFP) regarding the pre-construction phase of building a temporary railroad platform, which is attached. We encourage you to consider submitting a proposal. It is an exciting project that will provide important benefits to the future of our community.

If interested, please submit the Project Proposal and Qualifications and the Cost Estimate in two separate packages. The City will review the consultant qualifications submitted in Package 1 (Project Proposal and Qualifications) first. The City will only open and consider Package 2 (Cost Estimates) after the City has determined the qualified firms.

All correspondence pertaining to this proposal should be directed to my attention at: City of King, City Hall, 212 S. Vanderhurst Avenue, King City, CA 93930. If you have any questions, please contact Doreen Liberto, AICP, Community Development Director at 805-441-5892.

Sincerely,

Steven Adams  
City Manager

c: Doreen Liberto, AICP, Community Development Director  
Octavio Hurtado, PE, City Engineer

Attachment: RFP



**KING CITY**

*C A L I F O R N I A*

**CITY OF KING  
MULTIMODAL TRANSIT CENTER TEMPORARY PLATFORM PROJECT**

**DESIGN AND ENGINEERING SERVICES/  
APPLICATION/NEGOTIATION OF AGREEMENTS AND PERMITS**

**REQUEST FOR PROPOSALS (RFP)**  
(February 13, 2020)

**DUE DATE: 5:00 P.M. MARCH 11, 2020**

## I. PURPOSE

The City of King ("City") is inviting interested parties to submit proposals to retain the professional services of a qualified firm to assist the City in the pre-construction phase of building a temporary railroad platform for the eventual construction of the King City Multimodal Transit Center ("MMTC"). The City seeks a team that thoroughly understands the form and function that goes into approving and designing a temporary railroad platform for the eventual construction of a MMTC, including agreements needed for right-of-way, railroad crossings, track usage, transportation service, etc. The selected firm shall have experience working with Union Pacific Railroad ("UPRR"), AMTRAK, or other similar railroad organizations to obtain approval of the items necessary to construct a railroad platform. The team should include professionals familiar with a tiered environmental approach.

The selected firm shall hold outstanding experience in the design and engineering of MMTCs and negotiating with UPRR, AMTRAK and other involved entities to obtain the needed agreements.

The primary items involved in this Request for Proposals ("RFP") include:

1. Seeking UPRR, AMTRAK and other agencies' approval(s) and agreement(s) for a new railroad crossing, acquisition of right-of-way necessary for the platform and future MMTC, and other required items.
2. Design and engineering of a temporary railroad platform.

Generally, deliverable include:

- a. Design for the King City Interim Station Platform.
- b. Final Estimate, Schedule and Funding Plan for Construction.
- c. Services and Operations Agreement with UPRR and AMTRAK for Platform Use.

Available grant funds available for this RFP is \$1,279,323.

## II. BACKGROUND

The City of King is located on Highway 101 in the Salinas Valley, 155 miles south of San Francisco and 277 miles north of Los Angeles. The population is 14,880. King City serves as a gateway and access point for nearby Pinnacles National Park, Monterey County wine region, Fort Hunter Liggett, a thriving agricultural area, and an area rich in history made famous by the writings of John Steinbeck.

The City, in partnership with the San Luis Obispo Council of Governments ("SLOCOG"), received funding under the State Rail Assistance ("SRA") Program to complete the Pre-Construction portion of constructing a MMTC. ***The grant amount is \$1,279,323.00 to complete the tasks contained in this RFP.*** Since approximately 2006, the City has been actively developing a project to construct a MMTC on land adjacent to the rail corridor along First Street between Pearl Street and Broadway Street. The King Station passenger service platform was identified in the 2018 California State Rail Plan in the 2022 scenario: *"Make early investment in additional local stops on the Coast Route in Soledad and King City, for immediate use by the long-distance Coast Starlight and longer-term use by intercity trains between Goleta and Gilroy."* As a way to fast-track this project, SRA funding can be used to design and construct a temporary railroad platform to enable the Coast

Starlight to serve residents of the City, personnel of Fort Hunter-Liggett, visitors to the Pinnacles National Park and residents of neighboring rural, low-income communities along this rail corridor. If the funding available is not sufficient to complete all tasks, the contract may be structured in phases and additional funding will be requested to complete the final phases in the future.

The Amtrak-managed Coast Starlight service currently operates between Salinas and Paso Robles without stopping anywhere along this one-hundred (100) mile section of the Central Coast. Although a rail station ("King's Station") was first opened in the City of King in 1886, King City and the surrounding area are not currently served by any rail service, even though the rail corridor is within walking distance of most of the town. The City is identified in the 2018 California State Rail Plan in the 2027 scenario: "Provide bihourly integrated intercity rail and integrated express bus service from Salinas to San Luis Obispo, including at least one intercity rail service in addition to the long-distance Coast Starlight." Additionally, the King City acts as the gateway to the nearby United States Army Garrison Fort Hunter-Liggett, which has seen significantly increased activity since the 9/11 terrorist attacks.

The City needs to finalize Pre-Construction work before applying for funding for construction of the temporary railroad platform. This RFP requires the chosen consultant to negotiate agreements with UPRR, AMTRAK, and other stakeholders and design and engineer the temporary railroad platform. ***The environmental review will be conducted under a separate contract.*** (The Project is covered by the Final Program Environmental Impact Report/Statement ("EIR/S") that SLOCOG completed for the San Luis Obispo - Salinas rail corridor, and the City would coordinate with UPRR on a Categorical Exemption for a temporary railroad platform within the existing rail right-of-way. The full buildout station project would be subject to subsequent environmental analysis tiering of the Final Program EIR/S.<sup>1</sup>) The City will contract separately for the environmental review.

### III. SCOPE OF WORK

The RFP includes tasks for the following items:

- Seeking UPRR, AMTRAK and other needed approval(s) and agreement(s) for a new railroad crossing and acquisition of right-of-way necessary for the platform and future MMTC.
- Design and engineering a temporary railroad platform.

The King City temporary rail platform improvements shall include the following:

- Truck and platform improvements at and adjacent to the King City Train Station.
- Station improvements at the King City Train Station.
- Truck improvements required for operation of rail service between Goleta and Gilroy.
- Construction of improvements to connect Jayne Street to Broadway Street (ultimate) and to Chestnut Avenue (temporary).
- Installation of lighting, landscaping, signage and fencing at the station and parking areas.

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<sup>1</sup> <https://www.dropbox.com/sh/yj549xhc61xdr66/AACKcMiFonFliWSHUXrc6Odha?dl=0>

- Installation of station amenities such as ticket vending machines, station signage, seating, shelters, and a visual message system, as needed.
- Utility investigations, as needed.

**A. Design and Engineering**

In concert with the discussions and negotiations of agreement(s) with UPRR, AMTRAK and other involved entities, the consultant shall provide preliminary engineering design specifications of a temporary railroad platform. The City's goal is to close Pearl Street, open Broadway Street. Phased temporary circulation from Jayne Street to Chestnut Street or Broadway Street shall be considered as part of the design.

The plans should identify physical features on the ground, such as sidewalks, driveways, drainage structures, fences, driveways, signs, retaining walls, overhead utilities and poles, underground utilities and other features and potential constraints associated with constructing a temporary railroad platform.

The Products shall include:

**Preliminary and Final Designs:** The final design plan specifications of the temporary rail platform. Full civil plans including the physical features listed under Item No. IV below.

- **Preliminary Engineering Design:** The plans should identify physical features on the ground such as sidewalks, driveways, drainage structures, fences, driveways, signs, retaining walls, overhead utilities and poles, underground utilities and other features and potential constraints associated with constructing a temporary railroad platform.
- **Final Design:** Final design plan specifications of temporary rail platform. Full civil plans including the physical features listed under Item No. 1 above.

**List of Task and Costs (Temporary Railroad Structure):** A breakdown of tasks and estimated improvement costs shall be provided on the final design specifications.

**1. Project Initiation and Project Team Coordination:**

The consultant, City chosen negotiator and City staff shall meet to discuss the project, perform peer review of all available project materials and develop a work plan.

**Deliverables:**

- Meeting Notes
- Work Plan

**2. Project Management:**

The consultant shall provide overall project management for taking the project's design documents and completing the final design for the Project and preparing the Project for the construction phase. This includes:

- Supervising and coordinating all design activities.
- Tracking overall project schedule and design costs.

- Attending twelve (12) Project Team meetings during the Preliminary and Final Design Phase. The consultant's design team members shall attend on an as needed basis.
- Preparing a progress report and provide to the City on a monthly basis with transmittal of the invoice (required for review and processing for payment).
- Ensuring the consultant's team implements quality assurance procedures.
- The consultant's Project Manager shall review all quality assurance "check prints" and "review prints" prior to submitting deliverables.
- Ensuring coordination of all design work with other work being performed by others within the project limits.

**Deliverables:**

- Monthly Progress Reports

**3: Public Presentations:**

The consultant shall provide a minimum of two (2) public presentations, including before the Planning Commission and City Council.

**Deliverables:**

- Powerpoint presentations, diagrams, etc.
- Preliminary and final engineering design maps and exhibits.

**4. Topographic Surveys:**

The consultant will obtain up-to-date base mapping to complete the final design.

**Deliverables:**

- One hard copy of all survey raw data, field notes and sketches.
- One hard copy and one electronic file of the survey points and monuments collected including point numbers, coordinates, elevations, and descriptions.
- Survey points.
- Existing track alignments and profiles.
- Topographic survey drawings with surface features and contours.
- Digital Terrain Model files.
- Utility drawings.
- Survey and alignment calculations and traverses.

**5. Utility Investigations:**

The Consultant will collect utility information from all utility owners (e.g., storm drain, sanitary sewer, water and street lighting). Utility information will also be obtained from California Water Service (water purveyor within

the City of King), Pacific Gas & Electric, telephone, and cable companies. The consultant will commission and manage the work to obtain utility and pothole information.

**Deliverables:**

- Summary of utility information.
- Updates to utility owner contact information.
- Location, elevation and other utility information.

**6. Geotechnical Investigations:**

The consultant shall commission and manage the work to obtain subsurface conditions for the design of the station platforms, station shelter or canopy at the stations. A report will be prepared to describe the subsurface soils conditions and how those conditions may affect proposed surface elements, as well as highlight the geotechnical recommendations for design. The log of test borings drawings will also be prepared to be included in the report and the plans, specifications and estimates package.

**Deliverables:**

- Geotechnical design recommendations report.

**7. Final Design:**

The consultant will prepare final engineering plans, technical specifications and cost estimates for bidding purposes. All plans shall be prepared in the US Customary units and comply with all standards and requirements of UPRR and AMTRAK. The consultant shall provide the City with full plans, technical specifications and updated cost estimate for review. The review sets shall be comprised of five (5) full size plan sets and five (5) half size plan sets, with other items provided in PDF format on a thumb drive. The files for the plans shall be included on the thumb drive with each submittal. Final plans shall be submitted in PDF and ACAD format.

**Deliverables:**

- Construction drawings of temporary platform and site improvements complete and in place.

**8. Estimates of Probable Construction Cost:**

Prepare estimates of probable construction cost including a written basis of estimate defining all major parameters, assumptions, and sources of cost data used. The construction estimate will be submitted with all levels of design development.

**Deliverables:**

- Estimates of probable costs.

**9. Estimates of Probable Right-of-Way Costs**

- Estimates of probable right-of-way costs, as needed.

**B. Applications and Negotiations for Agreement(s) and Permits**

The consultant shall represent the City in seeking approval of UPRR, AMTRAK and other stakeholders and obtain agreements to assist the City in the pre-construction phase of building a temporary railroad platform.

The City considers the tasks listed below to be the minimum requirements expected for seeking approvals from UPRR, AMTRAK and other stakeholders for a temporary railroad platform. The consultant shall provide the following:

**1. Negotiation Strategy and Implementation:**

Prepare and implement a strategy for the City to obtain all necessary approvals from UPRR, AMTRAK and other agencies involved in the approval process to utilize necessary right-of-way, construct/eliminate railroad crossings, and other agreements and permits that may be needed to construct and operate the temporary platform.

**2. Project Description:**

The Project Description requires a final access agreement with UPRR for the extension of Broadway Street and closure of Pearl Street. In addition, the Project Description may include offsite safety improvements, which may include onsite safety improvement, corridor safety improvements (e.g., crossing improvements, closure of rail crossing along the corridor). The City's preferred goal is to close Pearl Street and open Broadway Street for a 1:1 ratio of closures to new crossings when proposing a new crossing.

Negotiations and agreements may include phased temporary circulation from Jayne Street to Chestnut Street, and phasing of the opening of Broadway Street. Approval of UPRR will be necessary for placement of the permanent MMTC on their property. The consultant may need to negotiate agreements with other stakeholders for right-of-way, such as adjacent property owners near the MMTC.

**C. Optional Contract Items**

- 1. Hazardous Materials Reports:** Phase II Site Investigations may need to be conducted for parcels comprising the King City station. The Phase II investigations shall update Phase I ESAs conducted in November 2002.

**Deliverables:**

- Phase II Site Investigation Reports if determined necessary

- 2. Estimates of Probable Right-of-Way Costs:** Updated estimates of probable right-of-way costs as needed.

**Deliverables:**

- Estimates of probable right-of-way costs

**IV. RFP PRE-PROPOSAL CONFERENCE**

The City will conduct a pre-submittal meeting with interested consultants to review the project and tasks. The pre-submittal meeting is scheduled for **February 27, 2020 at 1:00 p.m. in the City Council Chambers, 212 S. Vanderhurst Avenue.**

## V. SUBMITTAL REQUIREMENTS

Please submit the Project Proposal and Qualifications and the Cost in two (2) separate packages. The City will review the consultant qualifications submitted in Package 1 (Project Proposal and Qualifications) first. The City will only open and consider Package 2 (Cost) after qualified consultants have been determined by the City. All proposers will be held to the applicable requirements, standards and protocols set forth in this RFP and the sample Consultant Services Agreement, attached as **Exhibit 1**. If subconsultants are proposed, the Subconsultant List Form, attached as **Exhibit 2**, must be included with the proposal. Such requirements and standards will be incorporated into the final Consultant Services Agreement subject to negotiation between the City and the Successful Proposer. Proposals should detail any assistance the respondent will require from the City.

All proposals shall include the following items:

### A. Cover Letter

1. Firm name, office location(s), telephone numbers, and e-mail addresses of the main contact(s).
2. Staff contact.
3. Provide a statement of the firm's general understanding of the project.
4. Number of years the firm has performed related professional services.
5. Type of organization: individual, partnership, corporation, other (please specify).
6. Indicate if your firm has any conflicts of interest related to your current contracts.
7. Provide a statement of the firm's ability to execute the City's standard consultant services agreement and include any desired revisions to the City agreement in the separate envelope with the Consultant Rate Schedule.

### B. Approach

1. Provide a detailed proposed strategy and approach to provide each task in the Scope of Work and any additional tasks recommended by consultant to accomplish the City's project objectives.
2. State why your firm is qualified for this RFP.
3. Describe how your firm will deliver your services.

### C. Project Team

1. Present the proposed project team for the services the firm anticipates providing, including an organization chart, their expertise, professional background, office location, and role they will play for the various types of services described in the RFP.
2. Describe management oversight and quality assurance.

### D. Experience and Qualifications

1. Present the firm's relevant experience with public agencies similar in scope to that identified in this RFP. Include the magnitude of the contract scope and cost, the name of the agency these services were provided for, and contact information (address, phone, and email address) for the public

agency's project manager. The qualifications package should include relevant experience with at least five (5) different public agencies where these services were provided.

2. Provide specific examples of how the firm has successfully delivered similar projects to other public agencies.

E. Cost Proposal

Provide a detailed cost proposal for each task listed in Section III - Scope of Work, consisting of the projected hours and hourly rate for each staff member assigned to each task. Proposals shall also include an overall rate schedule for each position proposed to be involved with the project to be used if any supplemental work is requested. Submit the cost proposal in a separate envelope as described above.

F. Schedule

Submit a proposed project schedule to complete each task listed in Section III – Scope of Work. Please note that it is the City's intent for work to be performed concurrently on design/engineering and applications/negotiations to the degree feasible.

**VI. SUBMITTAL INSTRUCTIONS**

Submit the RFP by **5:00 p.m. on March 11, 2020** to:

Steven Adams  
City Manager  
King City  
212 South Vanderhurst Avenue  
King City, CA 93930

Provide the submittal package in two (2) separate envelopes inside one larger envelope. Include three (3) copies of the Statement of Qualifications in one envelope. Include one copy of the Consultant Rate Schedule in the second envelope. The rate schedule will not be opened until the recommended eligibility list is determined. (Reference Submittal Requirements above.)

Please direct any questions to Steven Adams at 831-386-5917.

**VII. SELECTION PROCESS**

The selection will be completed in a three step process. First, a staff review committee will review the qualifications of each firm and establish an eligibility list based on qualifications. Second, a staff review committee will rank the firms on the eligibility list based on the following criteria::

- A. Staff expertise
- B. Experience of firm with similar projects
- C. Cost
- D. Degree to which approach meets City's needs
- E. Overall degree to which overall proposal meets the City's needs

Third, the recommended firm and agreement will be presented to the City Council for consideration.

## VIII. SCHEDULE

The following dates represent the City's best estimate of the schedule that will be followed with regard to this RFP process. The City hereby reserves the right, at its sole discretion, to modify this tentative schedule as it deems necessary, including, without limitation, extending the deadline for submission of Proposals.

The following is a tentative schedule.

Pre-proposal Conference:	<b>February 27, 2020</b>
Deadline for Submittals:	<b>March 11, 2020</b>
Review of Proposals:	<b>March 19, 2020</b>
Interviews (if necessary)	<b>March 27, 2020</b>
Consultant Section Made:	<b>April 3, 2020</b>
Decision by City Council:	<b>April 14, 2020</b>
Project Commencement:	<b>April 28, 2020</b>
Project Completion (Target):	<b>August 1, 2021</b>

## IX. STANDARD CONTRACT

The City's standard consultant services agreement is attached as **Exhibit 1**.

Exhibits:

Exhibit 1 – City's Standard Consultant Service Agreement

Exhibit 2 - Subconsultant List Form

# EXHIBIT 1

## CITY OF KING CONTRACT SERVICES AGREEMENT FOR CONSULTANT SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this \_\_\_\_ day of April, 2020, by and between the CITY OF KING, a California municipal corporation ("City") and \_\_\_\_\_ (herein "Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

### 1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Special Requirements – CDBG Program Requirements. Consultant may be requested to perform work associated with a Community Development Block Grant (CDBG). Consultant agrees to all additional terms and conditions of this Agreement as required for CDBG and are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

### 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of Three Hundred and Fifty Thousand Dollars (\$350,000) ("Contract Sum") per fiscal year.

2.2 Invoices. Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form

approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within forty five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum but not exceeding a total contract amount of Five Thousand Dollars (\$5,000) or in the time to perform of up to ninety (90) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **3. PERFORMANCE SCHEDULE**

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency,

including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding five (5) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

#### **4. COORDINATION OF WORK**

4.1 Representative of Consultant. \_\_\_\_\_ is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. City Manager [or such person as may be designated by the City Manager] is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer").

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Consultant. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### **5. INSURANCE AND INDEMNIFICATION**

5.1 Insurance Coverages. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$250,000.00 per person and \$500,000.00 per occurrence and property damage liability limits of \$500,000.00 per occurrence or (ii) combined single limit liability of \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended

or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsement to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.3 Indemnification. To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, except claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement. The Consultant's obligation to defend as stated herein is an obligation to reimburse the Client for reasonable defense costs and is limited solely to third-party allegations that the Consultant was negligent, and Consultant shall only be responsible for defense reimbursement costs proportionate to the finally determined percentage of liability based upon the comparative fault of the Consultant, as determined by a court of competent jurisdiction.

## **6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal

business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

6.3 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.

(b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Monterey, State of California.

7.2 Disputes: Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue any legal action under this Agreement.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but

not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of King 212 S. Vanderhurst Avenue, King City, CA 93930 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the

parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

8.9 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.10 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials \_\_\_\_\_

8.11 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF KING, a municipal corporation

\_\_\_\_\_  
Steven Adams, City Manager

ATTEST:

\_\_\_\_\_  
Erica Sonne, Deputy City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Roy Santos, City Attorney

**CONSULTANT:**

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

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_, 2017 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	
TITLE(S)	
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____	
_____	

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

- I. Consultant shall invoice City monthly based upon the following attached rate schedule:**
- II. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
  - A. Line items and brief description of all the work performed, the number of hours worked, and the hourly rate.
  - B. Line items for all materials and equipment properly charged to the Services.
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
  - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- III. The total compensation for the Services shall not exceed \_\_\_\_\_, as provided in Section 2.1 of this Agreement.**

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

**EXHIBIT 2**

**SUBCONSULTANT LIST**

The proposal shall include a complete list of all proposed subconsultants. All subconsultants listed must be provided a meaningful element of work within the defined scope of work.

**Proposed Subconsultant(s)**

<b>Subconsultant Firm(s) Name and Address</b>	<b>Scope of Work</b>	<b>Dollar Amount of Work</b>

\_\_\_\_\_  
Name of Lead Firm

\_\_\_\_\_  
Printed Name and Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date