

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this 11th day of December, 2019.

BY AND BETWEEN

County Engineers Association of California, a body corporate and politic, hereinafter referred to as CEAC,

AND

NCE, 501 Canal Blvd., Suite I, Richmond, CA 94804, hereinafter referred to as Consultant,

CEAC has determined that it is a matter of public convenience and necessity to engage the specialized services of a Consultant to provide a Statewide needs assessment of the local streets and roads.

Consultant is a firm of recognized professionals with extensive experience and training in its specialized field. In rendering these services, Consultant shall, at a minimum, exercise the ordinary care and skill expected of the average practitioner in Consultant's profession acting under similar circumstances. The work will involve the performance of professional, expert, and/or technical services of a temporary or part-time duration; and

The parties hereto do mutually agree as follows:

1. Definition

CEAC means either CEAC, as agent for such joint powers authority or nonprofit corporation as may be involved in the issuance of bonds, certificates of participation, or other evidences of indebtedness to finance the work contemplated herein; or said joint powers authority or nonprofit corporation.

2. Consultant's Services

The scope of work shall be as outlined in the Attachment dated September 6, 2019. No work shall commence on this project until a written Notice to Proceed is issued by CEAC Representative. An additional scope of work may be requested by CEAC for consultant to complete a subsequent study estimated to be completed in 2022.

3. Consideration

In consideration of the performance by Consultant in a manner satisfactory to CEAC of the services described in Article 2 above, including receipt and acceptance of such work by CEAC, CEAC agrees to pay Consultant a maximum not to exceed fee of \$485,500 dollars.

CEAC shall compensate Consultant as follows:

- a. Payments for the work accomplished shall be made based upon the work completed within the calendar month and be consistent with the attached cost proposal dated September 6, 2019. Monthly invoices shall be accompanied by an analysis of tasks completed for the invoice period and be based upon the attached Consultant's Schedule of Charges - 2019. This analysis shall be prepared in a format satisfactory to CEAC. CEAC will verify and accept all work prior to authorizing payment.
- b. Supplemental Consultant Services may be required at CEAC's discretion, upon prior written authorization by CEAC, and will be based on Consultant's fee schedule on file with CEAC.
- c. In the event that budget reductions occur in any fiscal year covered by this AGREEMENT that may cause CEAC to consider terminating this AGREEMENT, CEAC may attempt to renegotiate the terms of this AGREEMENT to reduce the cost thereof in lieu of termination under the termination provisions of the AGREEMENT.
- d. Consultant will not be required to perform services that will exceed the scope of work without amendment to this AGREEMENT.

Consultant will not proceed with additional services without prior written authorization. Consultant will not be paid for any expenditure beyond the contract amount stipulated without amendment to this AGREEMENT.

4. Equipment and Supplies

Consultant agrees to furnish all necessary equipment and supplies used in the performance of the aforementioned services at Consultant's sole cost and expense.

5. CEAC's Responsibility

CEAC will make available reports, data, and other records as available. Notwithstanding the foregoing, CEAC does not represent the accuracy of the content of said materials.

6. CEAC's Representative

CEAC has designated the Stanislaus County Public Works Department as their representative (Manager) for this contract and shall represent CEAC in all matters pertaining to the services to be rendered pursuant to this AGREEMENT.

7. Term and Termination

The term of this AGREEMENT shall commence on the date stipulated in the Notice to Proceed, and unless otherwise modified, shall terminate on the date that the work is accepted by CEAC. CEAC may, at its sole option and discretion, cancel or terminate this AGREEMENT, without any liability other than payment for work already performed, up to the date of termination by giving three days written notice of such termination to Consultant. Consultant shall be paid the reasonable value of its services rendered. In the event of any such termination by CEAC, Consultant shall provide to CEAC a termination report consisting of all reports, data, and records accumulated to the date of such termination in a form capable of assimilation for use by CEAC.

8. Indemnification and Insurance

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless County Engineers Association of California, California State Association of Counties, League of California Cities, and Stanislaus County, hereafter referred to as AGENCIES, their agents, appointed and elected officers, and employees from and against any and all liability, expense (including defense costs and legal fees), lawsuits, actions, claims, proceedings, and damages of any nature whatsoever, including without limitation, brought for or on account of bodily injury, death, personal injury, or property damage (including property of Consultant), which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, representatives, contractors, subcontractors, consultants, or subconsultants of any tier.

The foregoing paragraph notwithstanding, Consultant further shall indemnify, defend, and hold harmless AGENCIES, their agents, appointed and elected officers, and employees from and against any Workers' Compensation suits, liability, or expense arising from, or connected with, any services performed pursuant to this AGREEMENT on behalf of Consultant by any person.

Neither the Consultant, nor its agents and subconsultants of any tier, shall be obligated to indemnify the AGENCIES and their related persons and entities for liabilities caused by the active negligence of the AGENCIES and their related persons

and entities. However, this provision does not limit any obligation to insure and defend the AGENCIES and their related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

Insurance

Without limiting Consultant's indemnification of AGENCIES and during the term of this AGREEMENT, Consultant shall provide and maintain, at its own expense, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the AGENCIES and primary to, and not contributing with, any other insurance maintained by the AGENCIES. Certificate(s) or other evidence of coverage shall be delivered to Stanislaus County, attention David Leamon (leamond@stancounty.com), prior to commencing services under this AGREEMENT, shall specifically identify this AGREEMENT, and shall contain the express condition that the AGENCIES are to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance.

Failure by Consultant to procure and maintain the required insurance shall constitute a material breach of contract upon which AGENCIES may immediately terminate or suspend this AGREEMENT.

Liability:

Such insurance shall be endorsed naming the AGENCIES as an additional insured and shall include:

1. General liability insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises/operations, contractual, independent contractors, advertising, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
 - a. If written with an annual aggregate limit, the policy limit should be two (2) times the above-required occurrence limit.
 - b. If written on a Claims Made Form, the Consultant shall be required to provide an extended two-year reporting period commencing upon termination or cancellation of this AGREEMENT.
2. Comprehensive auto liability for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

Workers' Compensation:

Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with a One Million Dollar (\$1,000,000) limit, covering all persons the Consultant is legally required to cover.

Professional Liability:

Insurance covering liability arising from any error, omission, or negligent act of the Consultant, its officers, or employees with a limit of liability of not less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) in aggregate. If written on a Claims Made Form, Consultant shall continue to provide coverage for this project for a period of two (2) years from the date of termination or completion of this AGREEMENT.

Consultant agrees to the above Indemnification and Insurance Provisions.

9. Anti-Discrimination

Consultant certifies and agrees that all persons employed by Consultant, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Consultant without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with State and Federal anti-discrimination laws. Consultant further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national origin, or sex. Consultant agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing provisions when so requested by CEAC.

Consultant specifically recognizes and agrees that if CEAC finds that any of the foregoing provisions have been violated, the same shall constitute a material breach of contract upon which CEAC may determine to cancel, terminate, or suspend the AGREEMENT. While CEAC reserves the right to determine individually that the anti-discrimination provision of the AGREEMENT has been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated State or Federal anti-discrimination laws shall constitute a finding by CEAC that Consultant has violated the anti-discrimination provisions of the AGREEMENT.

At its option, and in lieu of canceling, terminating, or suspending the AGREEMENT, CEAC may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. CEAC and Consultant specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the

circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

10. Independent Contractor Status

This AGREEMENT is by and between CEAC and Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between CEAC and Consultant.

Consultant understands and agrees that all persons furnishing services to CEAC pursuant to this AGREEMENT are, for purposes of Workers' Compensation liability, employees solely of Consultant and not of CEAC.

Consultant shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Consultant pursuant to this AGREEMENT.

11. Assignment

This AGREEMENT shall not be assigned without the prior written consent of CEAC. Any attempt to assign without such consent shall be void and confer no rights on any third parties.

12. Forum Selection

Consultant hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Consultant, on Consultant's behalf or on the behalf of any subconsultant, which arises from this AGREEMENT or is concerning or connected with services performed pursuant to this AGREEMENT, shall be deemed to be in the courts of the State of California located in Los Angeles County, California.

13. Conflict of Interest

No AGENCIES employee in a position to influence the award of this AGREEMENT or any competing AGREEMENT, and no spouse or economic dependent of such employee, shall be employed in any capacity by Consultant herein, or have any other direct or indirect financial interest in this AGREEMENT.

14. Gratuities

It is improper for any representatives of AGENCIES to solicit consideration, in any form, from Consultant with the implication, suggestion, or statement that Consultant's provision of the consideration may secure more favorable treatment for Consultant in the award of the AGREEMENT or that Consultant's failure to provide such consideration may negatively affect CEAC'S consideration of Consultant's submittal. Consultant shall not offer or give, either directly or through an intermediary, consideration, in any form, to any representatives from AGENCIES for the purpose of securing favorable treatment with respect to the award of the CONTRACT.

Consultant shall immediately report any attempt by any representatives from AGENCIES to solicit such improper consideration. The report shall be made to Stanislaus County. Failure to report such a solicitation may result in Consultants submittal being eliminated from consideration.

Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

15. Termination for Improper Consideration

CEAC may, by written notice to Consultant, immediately terminate the right of Consultant to proceed under this AGREEMENT if it is found that consideration, in any form, was offered or given by Consultant, either directly or through an intermediary, to any representatives from AGENCIES with the intent of securing the AGREEMENT or securing favorable treatment with respect to the award, amendment, or extension of the AGREEMENT or the making of any determinations with respect to Consultant's performance pursuant to the AGREEMENT. In the event of such termination, CEAC shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

Consultant shall immediately report any attempt by any representatives from AGENCIES to solicit such improper consideration. The report shall be made to Stanislaus County.

Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

16. CEAC Rights

CEAC may employ, either during or after performance of this AGREEMENT, any right of recovery CEAC may have against the Consultant by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of CEAC under this AGREEMENT are in addition to any right or remedy provided by California law.

17. Fair Labor Standards Act

Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless CEAC from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Consultant's employees for which CEAC may be found jointly or solely liable.

18. Prevailing Wage Requirements

Consultant must comply with all applicable prevailing wage requirements. The subject project is a public work as defined in Section 1720 of the California Labor Code.

19. Consultant Responsibility

A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the AGREEMENT. It is CEAC's policy to conduct business only with responsible consultants.

20. Employment Eligibility Verification

Consultant warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. Consultant shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Consultant shall retain such documentation for all covered employees for the period prescribed by law. Consultant shall indemnify, defend, and hold harmless CEAC from employer sanctions and any other liability that may be assessed against Consultant or CEAC in connection with any alleged

violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this AGREEMENT.

21. No Payment for Services Provided Following Expiration/Termination of AGREEMENT

Consultant shall have no claim against CEAC for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Consultant after the expiration or other termination of this AGREEMENT. Should Consultant receive any such payment it shall immediately notify CEAC and shall immediately repay all such funds to CEAC. Payment by CEAC for services rendered after expiration/termination of this AGREEMENT shall not constitute a waiver of CEAC right to recover such payment from Consultant. This provision shall survive the expiration or other termination of this AGREEMENT.

22. Consultant Assignment

a. Consultant shall not assign its rights or delegate its duties under the AGREEMENT, or both, whether in whole or in part, without the prior written consent of CEAC, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, CEAC consent shall require a written amendment to the AGREEMENT, which is formally approved and executed by the parties. Any payments by CEAC to any approved delegate or assignee on any claim under the AGREEMENT shall be deductible, at CEAC sole discretion, against the claims that Consultant may have against CEAC.

b. Shareholders, partners, members, or other equity holders of Consultant may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Consultant to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the AGREEMENT, such disposition is an assignment requiring the prior written consent of CEAC in accordance with applicable provisions of this AGREEMENT.

c. Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without CEAC's expressed prior written approval, shall be a material breach of the AGREEMENT, which may result in the termination of the AGREEMENT. In the event of such termination, CEAC shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

23. Intellectual Property

All reports, drafts, materials, etc., prepared pursuant to this AGREEMENT will become the property of CEAC and not the Consultant.

24. Notices

Any notice required or desired to be given pursuant to this AGREEMENT shall be given in writing and addressed as follows:

CEAC Representative
David A. Leamon, PE
Director of Public Works
Stanislaus County
Modesto, CA 95358

CONSULTANT
Margot Yapp, P.E.
President
NCE
501 Canal Blvd., Suite 1
Richmond, CA 94804

The address for notice may be changed by giving notice pursuant to this paragraph.

25. Entire AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between CEAC and Consultant and may be modified only by further written AGREEMENT between the parties hereto.

IN WITNESS WHEREOF, CEAC, caused these presents to be subscribed by the CEAC, and the Consultant has hereunto subscribed its corporate name and affixed its corporate seal by its duly authorized officers the day, month, and year herein first above written.

CEAC

NCE

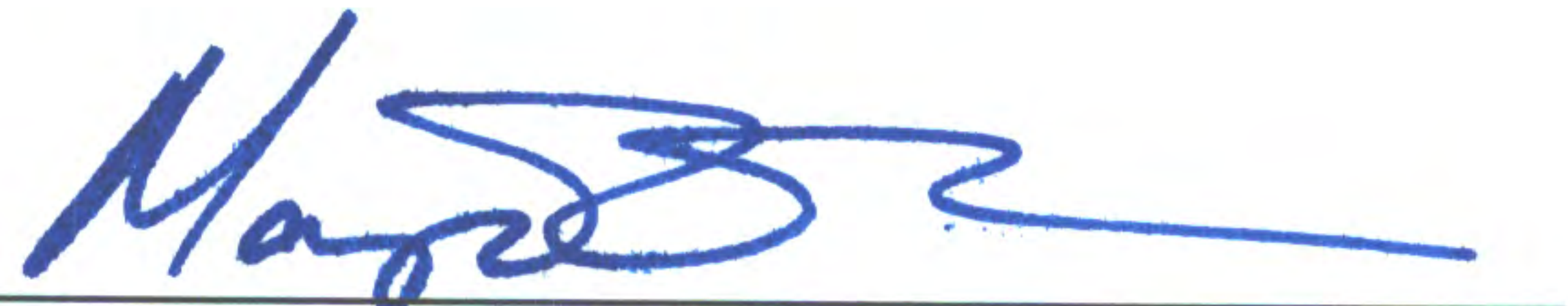
By



President

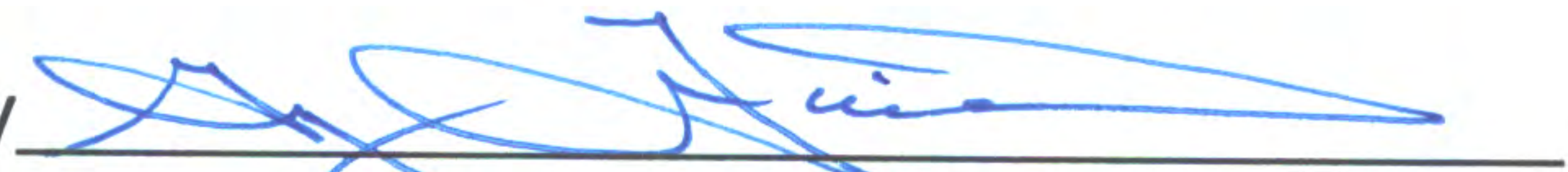
Rick Tippet

By



President

By



Corporate Secretary