



RFQ #2321-021523
Airfield Pavement Reconstruction

Addendum/Clarification No. 2

March 10, 2023

Questions:

1. The RFQ mentions the model contract is part of Section III; however, there is no Section III in the RFQ. Can you provide us with the model contract to review?
 - a. [Please see attached sample City PSA contract \(Professional Services Agreement\).](#)

2. Is this a concrete pavement or asphalt?
 - a. [Most surfaces are asphalt concrete with minor concrete surfaces.](#)

3. Can you confirm that this project:
NEW! CMAR for Airfield Pavement Reconstruction, The City of Hayward may be seeking a consultant to provide construction management-at-risk services for airfield pavement reconstruction projects at Hayward Executive Airport. RFQ September 2023 – please set a call with the airport and add to VP / SLT.
 - a. [City typically uses Standard Project Delivery Method, which is, “Design – Bid – Build” for all its projects. However, the City reserves the right to use CMAR if necessary for a future project. Please outline very briefly, where CMAR Option May be applicable and or feasible. City also does not typically get involved in D-B \(Design-Build\) Project Delivery Method.](#)

4. Can you provide some clarity on where pages 29 and 30 of the RFQ should be inserted in the SOQ? Page 20 Section 3 calls out pages 25-29 but page 29 states (Complete and submit as #2 A.1., in part 3 of Sections II “Response Requirements”). It seems, however; that there is no part Part 3 of Section II. If I’m not mistaken, Part 3 should be in Section 4 according to the layout on page 20.
 - a. [Please follow below requirements:](#)
 - i. [Section 1: Cover Page Letter/Executive Summary, Addendum 1 & Addendum 2, both signed and dated anywhere on bottom of page. Number of pages as required, say, 3-5. Also include right after Cover Letter, signed dated in Box acknowledgment as shown on pg. 9 of RFQ, titled, Airfield Pavement Reconstruction. This signed page must comply with requirement 5, Section E of the RFQ.](#)

[Pay attention to requirement 6, Section E of the RFQ regarding attaching additional information.](#)

[Pay attention to requirement 8, Section E of the RFQ regarding attaching Form 700. If applicable, attach at the last of Section 1.](#)

[Pages not included in 20 pages Section 4, maximum.](#)



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- ii. **Section 2:** Submit Deviations, exceptions, if any, mentioned in requirement 10, Section E of the RFQ.
Submit pages showing Part 1, Sections B, C, D, E, F, G, H, I. As needed number of pages.

Pages not included in 20 pages Section 4, maximum.

- iii. **Section 3:** Submit “Company Information” “Non-Collusion Affidavit” as shown in Part 2 of the RFQ.

Submit “List of DBE Firms” if applicable as shown in Part 3 of the RFQ following FAA Requirements.

Submit “Certification Regarding Lobbying” as shown in Part 3 of the RFQ following FAA Requirements.

Submit “Certification of Offeror/Bidder Regarding Tax Delinquency And Felony Convictions” as shown in Part 3 of the RFQ following FAA Requirements.

Pages not included in 20 pages Section 4, maximum.

- iv. **Section 4:** Provide required information as per Sections 1, 2, 3, & 4 as per Part 3 of the RFQ.

Pages Limited to 20 pages Section 4, maximum.

- 5. Is Attachment C: Staffing Plan excluded from the 20-page limit for Part 3?
 - a. Yes. Please Submit “Staffing Plan”, 1. Architectural-Engineering Key Personnel & 2. Sub consultants, as titled under Section 4, which section is limited to 20 single-sided pages (11 font or greater size) maximum.

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF HAYWARD AND [REDACTED]

FOR
MISSION BOULEVARD CORRIDOR IMPROVEMENTS PHASE 3
FINAL DESIGN

THIS AGREEMENT, dated for convenience this 15 day of May, 2017, is by and between [REDACTED], a California corporation, ("Consultant") and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services which will be required by this agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Consultant and the City agree as follows:

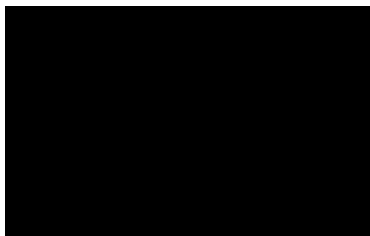
AGREEMENT:

(1) Scope of Service.

Consultant agrees to provide engineering and design services to City for the Mission Boulevard Corridor Improvements Phase 3 Project hereafter called "Project". Consultant's services are described as follows:

- (a) Basic Services. Consultant agrees to perform the scope of services described on pages 1 through 13 of the document "Scope of Work", attached hereto as Exhibit A and incorporated herein. Basic services will be performed in eight distinct phases: Reconnaissance, Transportation Analysis, Preliminary Design, Design Development, Construction Documentation, Meetings/Reporting, Utility Undergrounding, and Deliverables.
- (b) Outside Services. Consultant agrees to provide the following services by subcontract. Subcontractors have been agreed upon by the City and shall not be replaced without written consent.

- Geotechnical -
- Joint Trench Design -
- Potholing -
- Signal -
- Street Lights -
- Utility Underground -



- (c) Additional Services. Prior written authorization for additional services must be given by the City. Additional services include, but are not limited to, those services required due to significant changes to the general scope of the Project, service as witness in litigation, and construction inspection services.

(2) Compensation.

City hereby agrees to pay Consultant for services performed according to the following schedule:

- (a) Payments for Basic and Outside Services: Payments to the Consultant for authorized and satisfactorily completed Basic Services will be made on a time and expense basis in accordance with Exhibit B and the rates as shown in Exhibit C. The total contract not-to-exceed amount for Basic Services shall be [REDACTED]
- (b) Payments for Additional Services: Payments to the Consultant for authorized and satisfactorily completed Additional Services will be made on a time and expense basis in the manner set forth in Section (1)(c) Additional Services for a not-to-exceed amount of [REDACTED]

Payments to the Consultant will be made upon acceptance by the City Engineer of each Additional Service and after receipt of an itemized billing by the Consultant.

- (3) Effective Date and Term. The effective date of this agreement is April 5, 2017 and it shall terminate after completion and acceptance of all required services.

(4) Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.

(5) Billings. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief description of any costs incurred, and the Consultant's signature.

(6) Advice and Status Reporting. Consultant shall provide the City with timely advice of all significant developments arising during performance of its services hereunder orally or in writing.

(7) Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm [REDACTED]. The primary provider of the services called for by this agreement shall be [REDACTED] who shall not be replaced without the written consent of City's Director of Public Works.

(8) Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

(9) Assignment and Subcontracting. It is recognized by the parties hereto that a substantial inducement to City for entering into this agreement was, and is, the professional reputation and competence of Consultant. Neither this agreement nor any interest therein may be assigned by Consultant without the prior written approval of City's Director of Public Works. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Director of Public Works.

(10) Insurance. On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide **proof** thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. **The Certificate of Insurance shall clearly identify the project name and number in the space labeled "Description of Operations/Locations/Special Items" on the form.**

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.
- (b) Commercial General and Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
 - (ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
 - (iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
 - (iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.
 - (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
 - (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
 - (vii) The policy must contain a cross liability or severability of interests clause.
 - (viii) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 - (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
 - (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.
 - (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not

less than one million dollars covering the licensed professionals' errors and omissions, as follows:

- (i) Any deductible shall not exceed \$100,000 per claim.
- (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
- (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
- (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 - 1. The retroactive date of the policy must be shown and must be before the date of the agreement.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
 - 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
 - 4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.
- (d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
- (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.

(11) Indemnification - Consultant's Responsibility.

- (a) It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work.
- (b) Acceptance by City of the work performed under this agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that Consultant is apprised of the scope of the work to be performed under this agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.
- (c) Consistent with California civil Code section 2782.8, when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against all claims, demands, costs, or liability to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents during the performance this Agreement, or from any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by the negligence, reckless, or willful misconduct of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, excepting only liability arising from the sole negligence, active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers.
- (d) Other than in the performance of professional services by a design professional, which law shall be solely as addressed in subparagraph (c) above, and to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against any liability (including liability for claims, suits, actions, arbitration proceedings,

administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, interest, defense costs, and expert witness fees) arising out of the performance of this Agreement by Consultant, its officers, employees, agents, and sub-consultants, excepting only that resulting from the sole negligence, active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

- (e) Acceptance of insurance certificates and endorsements required under this agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

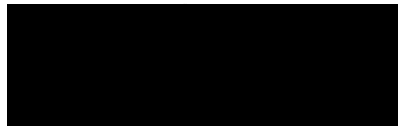
(12) Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(13) Nondiscriminatory Employment Practices. In the performance of this agreement, Consultant agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7, Nondiscriminatory Employment Practices by City Contractors, a summary of which is attached hereto as Exhibit D.

(14) Termination. This agreement may be terminated by the City immediately for cause or upon fifteen days written notice without cause. In the event of termination, the Consultant shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Consultant's delivery to the City of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this agreement.

(15) Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant:



To the City:

City Manager
777 "B" Street
Hayward, CA 94541-5007

A copy of any notice provided to the City Manager shall also be provided to Director of Public Works, in the Engineering and Transportation Division, at the same address.

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(16) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Consultant pursuant to this agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this agreement, shall be delivered to and become the property of City. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(17) Amendments. This agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

(18) Abandonment by Consultant. In the event the Consultant ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

(19) 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.

(20) No Third-party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

(21) Severability. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

(22) Compliance with Laws. In the performance of this agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, and the City Charter and Ordinances of City.

Consultant warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(23) Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.

(24) Conflict of Interest. Consultant warrants and covenants that the principal provider(s) of services presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. If any principal provider of services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with the City's local Conflict of Interest Code. In addition, if any other conflict of interest should nevertheless hereinafter arise, principal provider of services shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement.

(25) Nuclear Free Hayward. Consultant agrees to comply with the requirements imposed by Ordinance No. 87-024 C.S., establishing a "Nuclear Free Hayward." An executed copy of the Affirmation of Non-Involvement in the Development or Production of Nuclear Weapons is attached hereto as Exhibit E and made a part hereof.

(26) Copyright. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

(27) Time is of the Essence. Consultant agrees to diligently prosecute the services to be provided under this agreement to completion and in accordance with any schedules specified herein. In the performance of this agreement, time is of the essence.

(28) Whole Agreement. This agreement has ten pages excluding the exhibits described on its signature page. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(29) Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

CONSULTANT



Dated: April 28, 2017

By: [Redacted Signature]

Its: Vice President

CITY OF HAYWARD

Recommended

By: [Signature]
Morad Fakhrai
Director of Public Works

By: [Signature]
Kelly McAdoo
City Manager

Dated: _____

Dated: May 15, 2017

By: [Signature]
Michael Lawson
City Attorney

Attest: [Signature]
Miriam Lens
City Clerk

Dated: 6/11/2017

Dated: May 15, 2017

Attachments:

- Exhibit A: Scope of Work (13 pages)
- Exhibit B: Schedule of Estimated Hours (1 page)
- Exhibit C: Schedule of Hourly Rate (2 pages)
- Exhibit D: Nondiscriminatory Employment Practices Provisions (2 pages)
- Exhibit E: Affirmation of Non-involvement in the Development or Production of Nuclear Weapons (1 page)