



REQUEST FOR PROPOSAL #2311-100322
for
Project Initiation Document (PID) Phase Services for
SR-92/ Clawiter-Whitesell Interchange Upgrade
Project

City of Hayward

Issued: October 3, 2022

Due Date: November 1, 2022 at 2pm

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Section I – Introduction

The City of Hayward (City) is seeking proposals from qualified firms to provide professional engineering services for development of the Project Initiation Document (PID) for the State Route 92 (SR-92)/ Clawiter-Whitesell Interchange Upgrade Project (Project).

The City is the project sponsor and the PID phase is funded by a combination of Alameda CTC Measure BB and local funds.

The project is on the State Highway System and will follow Caltrans procedures, policies, and standards. A Cooperative Agreement has been executed between the City and Caltrans for oversight of the PID Phase. It is anticipated that the scoping document will be a Project Study Report – Project Development Support (PSR-PDS) as defined in the Caltrans Project Development Procedures Manual (PDPM).

The City seeks to have an approved PID by September of 2023.

A. Project Description

The SR-92/Clawiter Road interchange is the last interchange on SR-92 just east of San Mateo Bridge crossing at San Francisco Bay and approximately two miles west of the SR-92/I-880 interchange (See **Figure 1**). The Project is located in the western portion of the City of Hayward in an area that is generally built out and characterized primarily by industrial land uses. Hayward's industrial zones, manufacturing sites and office parks west of I-880 suffer from lack of access due to prolonged congestion periods on several major arterials, such as Winton Avenue, Clawiter Road and Depot Road and regional routes, such as I-880 and SR-92. Lack of truck access to and from the highways is affecting economic development in the west area.

The Project is the second phase of the “SR-92/Clawiter-Whitesell Interchange and Reliever Route Project” which would provide a local reliever route between SR-92 and I-880 to improve access to and from the industrial area north of SR-92 and west of I-880 and improve circulation and relieve congestion on SR-92, I-880 and major arterials in the area. Phase 1, completed in 2017, was comprised of local street modifications which included widening of West Winton Avenue at the Hesperian Boulevard intersection, signal phasing modifications, widening and extension of Whitesell Street between Depot Road and SR-92. This Project represents the second phase of improvements and involves reconstruction of the SR-92/Clawiter Road interchange to create the SR-92/Whitesell Street interchange and provide consolidated access to Clawiter Road and the reliever route along Whitesell Street.

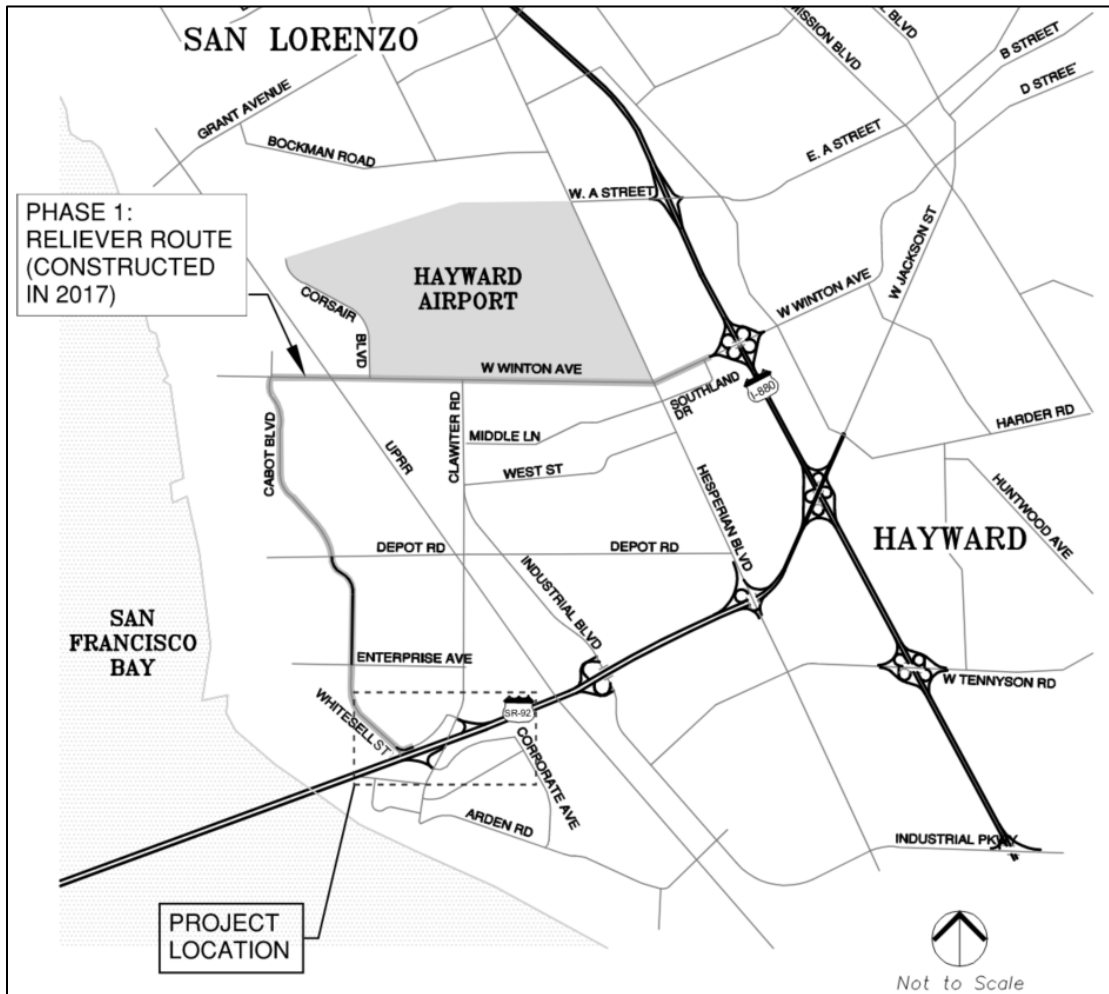


Figure 1: Project Location Map

The existing SR-92/Clawiter Road interchange is a two-quadrant cloverleaf (Type L-7) configuration which is currently operationally deficient and lacks sufficient storage for peak periods. The existing overcrossing includes one lane in each direction, no bike lanes, and a sidewalk only on the east side. There are no sidewalks on the approaches to provide safe pedestrian connectivity to the overcrossing. The westbound and eastbound ramp intersections with Clawiter Road do not comply with current Caltrans HDM guidance for complete streets making it uncomfortable for pedestrian and bike travel.

The Project would extend Whitesell Street over SR-92 to create a new SR-92/Whitesell Street interchange and would terminate and intersect at Clawiter Road just south of SR-92. This interchange modification project is known as Project R in the October 2009 LATIP document, which was prepared in partnership with Caltrans, ACCMA, ACTA, MTC, Alameda County and the cities of San Leandro, Union City and Hayward. The initial concept for the reconfigured interchange includes a new four-lane Whitesell Street overcrossing structure with new on and off-ramps to Whitesell Street in a diamond configuration. The Whitesell Street extension would include Class II bike lanes and sidewalks. Modifications to the Clawiter Road interchange would include improvements to the existing westbound SR-92 off-ramp to Clawiter Road, a new westbound on-ramp from Clawiter Road,

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and elimination of the existing SR-92/Clawiter Road loop on ramps. The project would also realign Baywater Avenue to accommodate the new westbound on and off ramps.

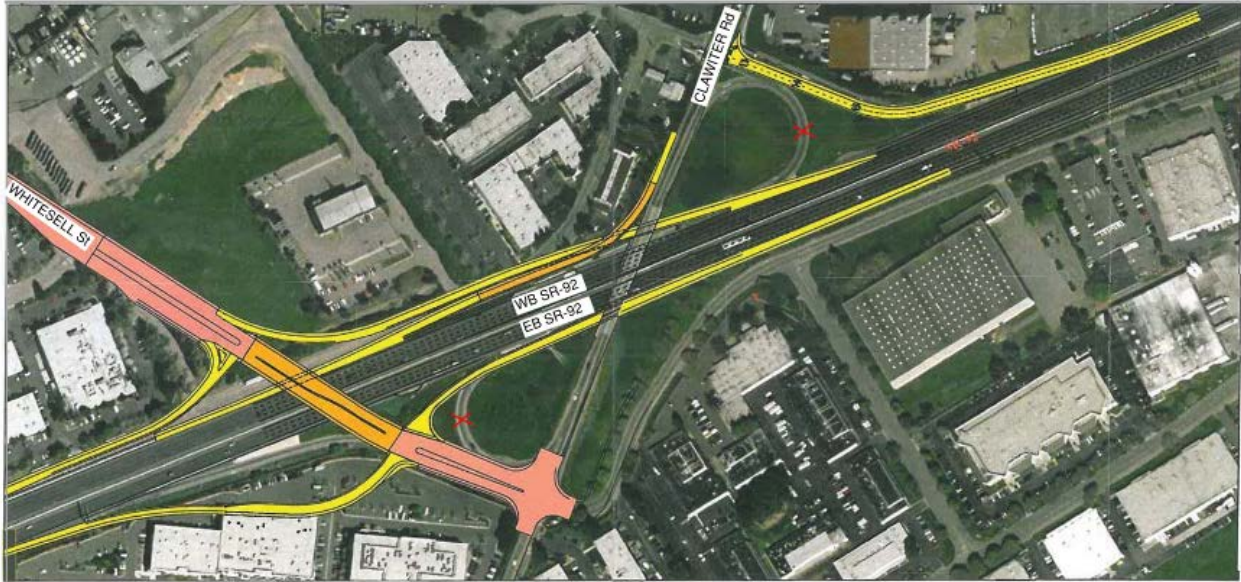


Figure 2: LATIP Project R: Conceptual Sketch SR-92/Whitesell Road Interchange Modification

Both phases combined will provide a local reliever route between SR-92 and I-880, would significantly improve access to and from industrial complexes, manufacturing sites and office parks north and south of SR-92 and west of I-880 and would relieve congestion on SR-92, I-880 and major arterials in the area.

B. Local Business Contract Equity Program Requirements

This contract will be funded in whole or in part by Alameda CTC VRF, Measure B and/or Measure BB funds, or such funds in combination with other local funds. Consequently, Alameda CTC's Local Business Contract Equity (LBCE) Program will apply. The LBCE Program establishes goals for the award of professional service contracts to firms located within Alameda County. For professional services under this contract, the LBCE Program requires the following goal(s):

Local Business Enterprise (LBE) goal of 70.0% and a Small Local Business Enterprise (SLBE) goal of 30.0%

Further details regarding the LBCE Program, including requirements and forms, can be found on the Alameda CTC website at www.alamedactc.org/app_pages/view/4543, along with a list of all currently certified firms. It is the responsibility of qualified firms which desire to work on contracts subject to the LBCE Program to ensure that they are appropriately certified by Alameda CTC on a timely basis. All firms utilized to meet an LBE, SLBE, and/or VLSBE goal must be certified by Alameda CTC by the time of proposal submission, and proof of certification must be submitted with the proposal. Applications for LBE, SLBE, and/or VLSBE certification will not be accepted with the proposal. The prime contractor will be required to report LBE, SLBE, and VLSBE utilization with each invoice submitted for payment.

For assistance or questions related to Alameda CTC LBCE Program, including LBE, SLBE, and VSLBE certifications, please contact the Alameda CTC LBCE Certification Unit:

Alameda CTC LBCE Certification Unit	
Email Address: certification@alamedactc.org	Mailing Address: Alameda CTC
Phone: (510) 208-7400	1111 Broadway, Suite 800
Fax: (510) 893-6489	Oakland, California 94607

Section II – Scope of Services

Services are anticipated to generally include, but are not limited to, the development of Project Initiation Document (PID) in the form of a Project Study Report – Project Development Support (PSR-PDS) and all the supporting studies and reports required to obtain approval from Caltrans.

The City’s goal is to have this phase of the Project delivered creatively and expeditiously in order to position the Project to move to the next phase: Project Approval and Environmental Document (PA&ED). The City seeks to have an approved PID by September of 2023.

The work to be performed under contract based on this Request for Proposals (RFP) is described in [Attachment A](#) – Scope of Work attached hereto and incorporated herein.

Section III – Proposal Requirements

A. Proposal Schedule

The City reserves the right to alter the following schedule as necessary.

ACTIVITY	DATE/TIME
RFP issued.	October 5, 2022
Deadline for Written Questions	October 17, 2022, 5pm
Answers to Questions Posted to City Website	October 24, 2022
Proposal Due	November 1, 2022, 5pm
Interviews, if necessary.	November 14-15, 2022
Anticipated Announcement of Top-Ranked Firm.	November 21, 2022
Anticipated Notice to Proceed (Estimate)	January 10, 2022

B. Proposal Content

Proposals must follow the format guidelines and content requirements listed below. Nonconforming submittals may be rejected as nonresponsive. Proposals should be no more than 20 pages and include the following sections and content.

Proposers are advised to avoid submitting superfluous materials that do not address the specific requirements of the RFP or are covered elsewhere in the consultant's proposal. Additional material may be included in appendices to the proposal. However, elaborate brochures or other presentation material not specifically related to the scope of work are not desired.

The Proposal should be organized in the following sequence:

1. **Cover Letter** *(Not included in page limit)*

The cover letter shall include the name of the organization, mailing address, and telephone number, as well as the contact information for the proposed project manager.

The cover letter should describe the Consultant team, the commitment of the team and its key staff to the project, the team's commitment to Quality Assurance/Quality Control (QA/QC) and the team's special or unique qualifications or experience in project definition, project delivery, project budget monitoring and/or adherence to project schedule.

Cover letter shall be signed by an officer authorized to execute a contract with the City and shall contain a statement to the effect that the proposal constitutes a firm offer for at least six months from the last day for receipt of proposals set forth in this RFP.

2. **Table of Contents** *(Not included in page limit)*

A table of contents shall be provided that identifies the page numbers where to find the various sections included in the proposal.

3. **Firm Qualifications and Relevant Expertise**

This section shall introduce your proposed team and describe how your team's relevant expertise will be practically applied to fulfill the Scope of Work.

- Provide a brief profile for each firm on your team, including type of services offered, size and location of offices. Discuss specific qualifications and technical expertise of each firm that would be applicable to the Scope of Services.
- Provide descriptions of a minimum of three (3) projects similar in size and complexity completed in the last ten (10) years, preferably in the Bay Area.
- Include the client's name; the name of the client contact person to be used as a reference including a current telephone number; identify relevant staff who worked on the project; the estimated value of the contract; the percentage increase over the base contract; the schedule for each phase, and a description of process for the Consultant's adherence to the base budget and schedule.
- Identify any technical and/or procedural innovations that have been used successfully on other projects which may facilitate the performance of services, and which may not have been specifically stated in this RFP.

4. Understanding and Approach to the Required Scope of Work

By presenting a well-conceived work plan, this section of the proposal shall establish the Proposer's understanding of the City's objectives and work requirements, and the Proposer's ability to satisfy those objectives and requirements. Proposers are encouraged to bring their expertise, experience, and creativity to bear by proposing how the tasks in [Attachment A](#) (Scope of Services) can be implemented to meet the project goals, including alternate or revised approaches and schedules that would serve the City in achieving its project goals. Any items included that are not specifically requested in the RFP should be clearly described as "additional or optional tasks" in this section and should be included as separate line items in the budget proposal.

- Succinctly describe the proposed approach for addressing the required work, outlining the activities that would be undertaken in completing the various tasks and specifying who would perform them as well as any underlying assumptions.
- Include a Detailed Schedule for each task and deliverable contained in [Attachment A](#) (Scope of Services). The schedule should show the expected sequence of tasks and subtasks and include durations for the performance of each task, subtask, milestones, and submittal dates for each submittal. Also include a high-level schedule summarized by task.
- Demonstrate understanding of the key risks and challenges for delivering the project and mitigation measures.
- Identify key deliverables.
- Discuss the consultant team's Quality Assurance/Quality Control program for this project.

5. Management Plan.

This section shall describe methods of project management.

- Describe methods of planning, scheduling, delivery of tasks, coordination meeting strategies and how the team will provide updated and accurate information to the City for the duration of the contract.
- Describe how management of the team members and subconsultants will be handled as well as managing budgetary controls and avoiding exceeding resources allocated or specific tasks.

6. Staffing Plan, Qualifications and Availability

This section shall describe the qualifications and expertise of the proposed team members, including all subconsultants, in providing similar services. Include an organizational chart that clearly identifies key team members. Any substitution of key staff during the project will require approval from the City.

- Designate the Principal-in-Charge and the Project Manager who will serve as the City's key contacts throughout the duration of the contract.
- Key team members shall be identified by name, location, specific responsibilities on the project, estimated person-hours of participation by task, percent availability for assigned tasks, and their overall availability over the duration of this project.

- Include a brief bio for key team members describing similar projects on which they have been involved, their role on that project, client references for similar projects where a similar role was performed, and a description of the benefits the person brings to the team.
- Include a statement regarding the Proposer's ability to dedicate time, support staff and resources to this Project.

Full resumes may be included in the proposal appendices.

7. Comments on the City's Sample Professional Services Agreement *(Not included in page limit)*

A sample City Professional Services Contract is shown in [Attachment B](#).

Please provide a statement of your firm's acceptance of the City's insurance and indemnification requirements, or any reservation that your firm has with the requirements. If no objections are expressed, then City staff will conclude that the terms of the agreement are acceptable to the proposer.

8. LBE/SLBE Participation Summary *(Not included in page limit)*

This procurement and the resulting contract are subject to the LBCE Program established by Alameda CTC. The percentage of participation toward each goal shall be based on the cost proposal, excluding costs for any optional task(s) and/or phase(s). Proposer shall include in its proposal the LBE/SLBE Participation Summary from Alameda CTC Sample Cost Proposal Form B (under the worksheet tab labeled "LBCE"); the other sheets within the workbook are not required. Alameda CTC Sample Cost Proposal Form B is available on the Alameda CTC website at www.alamedactc.org/app_pages/view/10614 and is incorporated herein as if attached.

Proof of LBE/SLBE certification is required and is not included in the Proposal page limit. Each consultant team should comply with applicable Alameda CTC Contract Equity Program requirements.

9. Cost Proposal *(Not included in page limit, include as a separate attachment)*

The Consultant must provide the hourly billing rate for each participating staff person and classification. Billing rates must be broken down into direct salary, overhead, and profit rates.

A cost proposal table of estimated hours by task and firm (primary Proposer and all subconsultants) should be provided in both PDF and XLS/XLSX formats. The cost proposal must estimate the hours for all tasks identified in the proposal. Any additional items included that are not specifically requested in the RFP must be clearly described as "additional or optional tasks." Total estimated hours and costs should be provided for each task by firm. A total proposed "Not to Exceed Fee" shall be provided.

Include the percentage of the total contract value by firm for the base tasks. All work performed by Local Business Enterprise, Small Local Business Enterprise, and/or Very Small Local Business Enterprise firms should be clearly identified, and the percentage of their involvement noted.

C. Submittal Procedures

Proposers shall submit an electronic copy (PDF) of the proposal to the below email address by 2 p.m. by November 1, 2022 to be considered for this project. Proposals shall be clearly marked: SR-92 Whitesell/Clawiter Interchange PID Proposal, Project No. 05334. Responses to the RFP should be submitted to:

City of Hayward, Public Works Transportation Division
 777 “B” Street – Second Floor
 Hayward, CA 94541
 Attention: Kathy Garcia, Deputy Director of Public Works
 Email: kathy.garcia@hayward-ca.gov

Responses to the RFP received after the deadline will be returned unopened. Postmark is not acceptable.

D. Selection Process and Criteria

Proposal Evaluation

Submittals received by the deadline will be reviewed by a Selection Review Panel, which may be comprised of staff from the City of Hayward and representatives from outside agencies. The Panel will score the proposals based on the following criteria and point system:

PROPOSAL SCORING CRITERIA	MAXIMUM POINTS
1. Understanding the Required Scope of Work. Understanding of the RFP objectives, project needs, appropriate deliverables, schedule in accordance with the Scope of Work, and key risks and challenges as well as approach and mitigation measures.	30
2. Expertise. Qualifications and technical expertise of the proposer in performing related work, and proposer’s experience in working with this scope and with public agencies and familiarity with the related process.	30
3. Management Plan. Methods and strength of project management, including project communication, schedule and budget control, and quality assurance and quality control.	15
4. Staffing Plan and Availability. Appropriate staffing and organization of proposed team; qualifications and technical expertise of the team, particularly the project manager; key personnel’s level of involvement in performing related work; and assessments by client references as available. Capacity and ability to provide quality personnel in a timeframe that meets the needs of the contract and project.	15
5. Ability to Meet or Exceed Applicable LBE and SLBE Goals. This procurement and the resulting contract are subject to the LBCE Program established by Alameda CTC. A proposer shall receive 5 points for each goal achieved, for a maximum total of 10 points. The percentage of participation toward each goal shall be based on the cost proposal, excluding costs for any optional task(s) and/or phase(s).	10
Total:	100

Interview Evaluation

If the Selection Review Panel determines that interviews are not necessary, proposers will be ranked based on the Selection Review Panel's evaluation of the technical proposals.

Otherwise, the Selection Review Panel will establish a short list of proposers based on the evaluation and ranking of the proposals, and the City will select proposers from the short list for an interview.

The final evaluation to select the top-ranked proposer will be based solely on the interview criteria below and will not include the initial evaluation or ranking based on the proposal criteria above. The project manager and key team members should plan to attend the interview.

INTERVIEW SCORING CRITERIA	MAXIMUM POINTS
1. Understanding the Required Scope of Work.	25
2. Expertise.	25
3. Management Plan.	20
4. Staffing Plan and Availability.	10
5. Ability to Meet or Exceed Applicable LBE and SLBE Goals. A proposer shall receive 5 points for each goal achieved, for a maximum total of 10 points.	10
6. Effectiveness of Interview. Overall interview discussions and presentation.	10
Total:	100

E. Questions

Proposers are encouraged to promptly notify the City of Hayward in writing, of any apparent major inconsistencies, problems or ambiguities in the Scope of Services or this RFP. The request for information deadline is October 17, 2022, 5pm.

Any questions and requests for clarification/additional information shall be submitted to Rita Perez by emailing bids@hayward-ca.gov. If deemed necessary, questions and answers will be posted to the City's website for all prospective proposers.

Section IV – Attachments

Attachment A - Scope of Services

The following scope of services is intended to be used as an indication of minimum services to be provided for the Project's PID phase. The City desires to have an approved PID by September 2023.

Task 1: Project Management

This task includes all work by the consultant to effectively manage the scope, cost, and schedule of the project. This may include but is not limited to the following activities and deliverables identified below.

Task 1.1 – Coordination and Meetings

Proactively schedule and lead the following meetings including preparation of agenda, meeting notes, presentation materials and action item logs:

- Kick-off meeting to discuss and prioritize project objectives and outline an approach to meet those objectives.
- Regular meetings with City Project Manager and staff to review progress and contract and technical issues.
- Pre-PID meeting and monthly Project Development Team (PDT) meetings.
- Focus meetings to resolve specific issues or reach early consensus on approach.

Task 1.2 – Management & Administration

- Prepare and submit monthly progress reports and invoices in conformance with City's Standard Service Provider Agreement and Alameda CTC Consultant Payment Request Forms.
- Coordinate in-house design staff and subconsultants to assure free and timely flow of information for each task activity.
- Manage contract costs.

Task 1.3 – Project Controls

- Prepare a detailed schedule (using Microsoft Project) and submit an updated electronic file on a monthly basis. Prepare a four-week look-ahead schedule for monthly PDT Meetings.
- Develop and maintain a Quality Management Plan in accordance with Caltrans requirements.
- Prepare and maintain a Risk Management Plan.
- Maintain project records.

Task 1 Deliverables:

- Meeting agenda, materials, and notes
- Monthly invoices and progress reports
- Detailed MS Project schedule updated monthly
- Quality Management Plan
- Risk Register and Management Plan

Task 2: Project Study Report - Project Development Support (PSR-PDS)

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Task 2.1 – Preliminary Engineering

This task will include defining the Project purpose and need, developing conceptual alternatives, and screening concepts to move forward with a limited number of reasonable and feasible build alternatives for inclusion in the PID.

- Coordinate with Caltrans to obtain existing records and reports including as-builts, right-of-way maps, structure maintenance reports and transportation planning reports.
- Conduct site visit to assess existing conditions and constraints.
- Obtain aerial imagery for use as a base map for the PID phase
- Develop geometric concept exhibits and order of magnitude costs
- Develop criteria for comparing and evaluating conceptual alternatives and selecting proposed build alternatives for inclusion in the PSR-PDS

Task 2.1 Deliverables

- Log of existing records and reports collected
- Geometric concept exhibits and capital cost estimates
- Memo documenting conceptual alternatives considered, screening process, and recommended Build Alternatives

Task 2.2 - PSR/PDS Attachments and Supplemental Documents

Prepare and obtain Caltrans approval for the necessary PSR-PDS attachments and supplemental documents in accordance with the Caltrans Project Development Procedures Manual (PDPM).

Task 2.2 Deliverables

Required Attachments:

- Location Map and/or Vicinity Map
- Schematic maps of the study area and alternatives
- Capital Outlay Project Estimate
- Typical Cross Sections
- Preliminary Environmental Analysis Report (PEAR)
- Transportation Planning Scoping Information Sheet
- Right-of-Way Conceptual Cost Estimate Component
- Life-Cycle Cost Analysis
- Risk Register
- Complete Streets Decision Document
- Vehicle-Miles Traveled Decision Document
- Transportation Management Plan (TMP) Data Sheet

Required Supplemental Documents

- Quality Management Plan
- Stormwater Documentation
- PSR-PDS Survey Needs Questionnaire
- Traffic Engineering Performance Assessment (TEPA)

- Headquarters Division of Engineering Services PSR-PDS Scoping Checklist
- Design Scoping Index
- Rosters of personnel participating in major reviews
- Capital Outlay Support Estimate

Task 2.3 – PSR-PDS

This task includes development of the PSR-PDS that follows the format and content requirements in Appendix S of the Caltrans PDPM. The PSR-PDS will discuss the proposed project alternatives, purpose and need, and provide an overview of impacts including anticipated environmental impacts and potential right-of-way impacts. A summary of the Traffic Engineering Performance Assessment and a discussion on the deficiencies of the current interchange will also be included. An Administrative Draft of the PSR-PDS will be provided for City review. An updated Draft PSR-PDS will be submitted for Caltrans review.

Caltrans comments on the Draft PSR-PDS shall be compiled into a comment resolution matrix. Comment responses will be reviewed with the City prior to incorporation into the PSR-PDS. The Final PSR-PDS and comment response matrix will be submitted to Caltrans for review and approval.

Task 2.3 Deliverables

- Administrative Draft PSR-PDS
- Draft PSR-PDS
- Final PSR-PDS and Comment Resolution Matrix

Attachment B - Sample City Professional Services Contract

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND
[name of Consultant]

THIS AGREEMENT, dated for convenience this ___ day of **[month]**, 20___, is by and between **[name of consultant]**, a **[insert here a description of contractor such as a sole proprietorship, a California corporation, or a limited partnership]**, ("Consultant") and the CITY OF HAYWARD, a municipal corporation 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.

[You may include other, more specific recitals if you believe it will help provide a context and therefore correct interpretation or easier administration of the agreement.]

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

AGREEMENT:

1. Scope of Service.

[Option 1: Specify here the services to be provided.]

[Option 2: Refer to services specified in an attachment. Example: "Subject to the terms and conditions set forth in this agreement, Consultant shall provide to City the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A."]

2. Compensation. Total compensation for Consultant's services and expenses shall not exceed **[indicate amount]**. City hereby agrees to pay Consultant for services under this Agreement in accordance with the Billing Rate Schedule and Estimated Fee Schedule attached as **Exhibit [Insert Letter]** and incorporated herein.

3. Effective Date and Term. The effective date of this agreement is _____ **[Except in very unusual circumstances and with specific written approval of the City Attorney and City Manager, the effective date inserted should not precede the date the agreement is fully executed]** and it shall terminate no later than _____. **[If the termination date is later than the end of the fiscal year, the agreement should include the following language: "This agreement is conditioned on continuing appropriation of funds in fiscal years ____ and ____."**

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The City reserves the right to terminate this agreement if such funding is not available or approved]

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. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Consultant's monthly bills shall include the following information to which such services or costs pertain: (1) a brief description of services performed; (2) the date the services were performed, (3) the number of hours spent and by whom; and (4) a brief description of any costs incurred, and the Consultant's signature. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided in section (2)()**{insert in the second set of parentheses the subsection designation, typically it is (c), in which the payment limitation is provided in section (2)}**.

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. The primary provider of the services called for by this agreement shall be **[insert here the name of the representative who will provide the services to the City]**, who shall not be replaced without the written consent of City's **[insert title such as City Manager, Director of Public Works, etc.]**.

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 the City. **Except for the subcontract with (Name) for (type of service provided by subcontractor) as specified in section (fill in the appropriate number) of this agreement (or use a paragraph # in Exhibit A, if that is the more appropriate reference for the specific contract you are drafting)**, Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's **[insert City official to make this determination]**.

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.

(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 Consultant 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. It is understood and agreed that Consultant has the professional skills experience, 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.

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.

Consultant shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, agents, or 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. 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.

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 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 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. In no event shall the cost to defend charged to the Consultant exceed the Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs.

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. Nondiscrimination. Consultant shall comply with all applicable federal, state, and local

laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis. All nondiscrimination rules or regulation required by law to be included in the Agreement are incorporated by this reference.

14. Termination. This agreement may be cancelled at any time by City for its convenience upon written notification to Consultant. 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: (Attn:)
(Consulting Name)
(Address _____)

To the City: Attn: Kelly McAdoo, City Manager
City of Hayward
777 B Street, 4th Floor
Hayward, CA 94541-5007

[Note: The City Manager may authorize notice to a subordinate staff member at his or her discretion. You should not revise the designation of the City Manager as the official to receive notice under an agreement without having the City Manager's explicit authorization to do so.]

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 700 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 **[indicate exhibit number or letter]** 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 twelve **[insert here the number of pages of the agreement if different from 12]** 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.

30. Electronic Signatures. The parties agree that the electronic signatures[, whether digital or encrypted,] of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures of this Agreement].

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.

Attachments: Exhibit A Alameda County Transportation Commission, Compliance Language: Professional Services, Local Business Contract Equity Program, consisting of [1] page.

Professional Services Contract - Exhibit A

ALAMEDA CTC Local Business Contract Equity Program Requirements

CONSULTANT shall comply with all applicable provisions of Alameda County Transportation Commission's (ALAMEDA CTC's) Local Business Contract Equity (LBCE) Program, incorporated herein by reference as if attached hereto. [AGENCY] shall provide a copy of the LBCE PROGRAM to CONSULTANT upon request.

If the CONSULTANT or any subconsultant is a Local Business Enterprise ("LBE"), Small Local Business Enterprise ("SLBE"), and/or Very Small Local Business Enterprise ("VSLBE") firm, the certificate for that firm shall be attached to this AGREEMENT.

No substitution of a listed LBE, SLBE, or VSLBE subconsultant on a contract can be made without the prior written approval of [AGENCY] with agreement of ALAMEDA CTC. If an LBE, SLBE, or VSLBE subconsultant is unable to perform successfully, the [AGENCY] or CONSULTANT shall submit a written request to ALAMEDA CTC for approval to replace such firm. CONSULTANT must make good faith efforts to replace such LBE, SLBE, or VSLBE with another LBE, SLBE, or VSLBE, respectively. ALAMEDA CTC may investigate the circumstances surrounding the substitution request.

CONSULTANT agrees that within ten (10) calendar days' receipt of payment from Sponsor Agency, CONSULTANT shall pay to its subconsultants all amounts due from such payment for satisfactory performance of its contract, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with ALAMEDA CTC's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, and/or noncompliance by a subconsultant. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE, and VSLBE subconsultants.

CONSULTANT agrees to include any subconsultant's acceptable invoices with each Payment Request Form that it submits to Sponsor Agency no later than thirty (30) calendar days after receipt of such invoice from the subconsultant. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE, and VSLBE subconsultants.

CONSULTANT agrees further to release retainage payments, if any, to each subconsultant within thirty (30) calendar days after the subconsultant's work is completed and accepted. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with ALAMEDA CTC's prior written approval. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE, and VSLBE subconsultants.

Attachment C - Reference Materials

The following information and documents related to this RFP and the Project are listed below and available online:

1. Alameda CTC Local Contract Equity (LBCE) Program
 - <https://www.alamedactc.org/get-involved/contract-equity/>