

CITY OF WATERFORD

Proposal No. 2017-17



REQUEST FOR PROPOSAL Civil Engineering Services

Proposals Due January 26, 2018 by 5:00PM

**City of Waterford
101 E Street
Waterford, CA 95386
(209) 874-2328**

12/07/2017

INTRODUCTION

From time to time, the City of Waterford requires as-needed consulting and engineering services for design and preparation of PS&E for Public Works construction projects, construction inspection, contract administration, land use, surveying, development review and general Public Works project management.

The City is seeking civil engineering consultants with knowledge and experience in one or more of the following disciplines: street improvements, storm drain improvements, parks and recreation improvements, and water/wastewater improvements, with the ability to provide in-house or capacity to sub-consult for survey services, traffic engineering, geotechnical, landscape design, structural design, and federal and state funding services.

The qualified firms shall provide consulting services on an “as-needed” basis for projects to be determined during the term of the contract. The contract will be for a 5-year term with assignments awarded such that their specified durations do not exceed the contract term.

MAILING OR ELECTRONIC SUBMITTAL INSTRUCTIONS

City of Waterford
101 E Street
Waterford, CA 95386

Electronic submittals may be sent directly to pbasalusalu@cityofwaterford.org.

INQUIRIES/QUESTIONS

Questions pertaining to the RFP should be directed to Peni Basalusalu, Public Works Director at his email address, pbasalusalu@cityofwaterford.org.

PROPOSAL SUBMITTAL

Proposals are due no later than 5:00p.m, and must be received by that time on the due date. Proposal postmark dates and times will not be considered as meeting that deadline. Proposers must submit three (3) bound copies of their proposal to the address shown under “Mailing or Electronic Submittal Instructions” above. The City is not responsible for proposals that are delinquent, lost, mismarked, and sent to an address other than that given above, or sent by mail or courier service. The City reserves the right, after opening the proposals, to reject any or all proposals, or to accept the proposal(s) that in its sole judgment is (are) in the best interest of the City.

Upon receipt of proposals, each consultant shall be presumed to be thoroughly familiar with all specifications and requirements of this proposal. The failure or omission to examine any form, instrument or document shall in no way relieve consultants from any obligation in respect to this proposal.

NOTICE TO PROPOSERS

The City is not required to give notice to Proposers in any specific format or on any particular timeline. At some point prior to execution of a final agreement for the requested services, the

City will notify those who submitted proposals of their non-selection. Proposers may be notified at different times depending on the needs of the City.

PROTEST PROCESS

If a Proposer desires to protest the selection decision, the Proposer must submit a written protest within five (5) business days after the delivery of the notice about the decision. The written protest must be submitted to the City Clerk, as outlined below. Protests received after the deadline will not be accepted. Protests must be in writing, must include the name and address of the Proposer and the RFP title, and must state all the specific ground(s) for the protest. A protest that merely addresses a single aspect of the selected proposal (for example, comparing the cost of the selected proposal in relation to the non-selected proposal) is not sufficient to support a protest. A successful protest will include sufficient evidence and analysis to support a conclusion that the selected proposal, taken as a whole, is an inferior proposal. The Director of Public Works will respond to a protest within ten (10) business days of receiving it, and the City may, at its election, set up a meeting with the Proposer to discuss the concerns raised by the protest. The decision of the Director will be final. The protest letter must be sent or hand-delivered to: City of Waterford, Attn: City Clerk, 101 E Street, Waterford, Ca 95386

PROJECT SCHEDULE

Proposals Due	January 26, 2018
Review/Selection	February 7 2018
Council Approval/Award	February 22, 2018

REVIEW OF PROPOSALS AND SELECTION OF CONSULTANT

Proposals should provide a straightforward and concise presentation adequate to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of contents. Responsiveness to the RFP will be a principal basis for evaluation.

Proposals submitted will be evaluated by a committee comprised of City of Waterford staff. The committee's evaluation will be based upon, but not limited to: proposal cost, strength of the proposal, related experience of the firm, professional qualifications of the individual(s) to be assigned to the city, ability to meet required deadlines, references from previous clients, and ability to enter into the City's City Engineer Services Agreement.

While cost is a key consideration, the City reserves the right to choose the best proposal, which may not be based on price. The committee may choose to interview the top candidates.

After evaluating the proposals, the City of Waterford reserves the right to further negotiate the proposed work and/or method and amount of compensation. The respondent must clearly state the period of time for which the proposal will be valid. This period must not be less than Ninety (90) days from the date of submittal.

PROPOSAL CONTENT

The City of Waterford requires the proposer to submit a concise proposal clearly addressing all of the requirements outlined in this RFP. A copy of the proposal shall be submitted and shall be organized in an easy-to-follow format. Proposals should be limited to fifteen (15) 8 ½" x 11" pages (including the cover letter and resumes). Lengthy proposals may not be well received.

Proposal must include, at a minimum, the following sections:

- **Cover Letter** : A brief summary containing highlights of Consultant’s proposed approach to the services described in the RFP, including a statement of its understanding of the project and services required, signed by an individual authorized to bind the proposing firm stating the firm has read and will comply with all terms and conditions of the RFP.
- **Background on Firm**: A brief description of the firm including the size of the organization, location of offices, years in business, organizational chart, name of owner and principal parties, and titles of staff. Qualifications of individuals who will perform the work listed in the Scope of Work along with identification of the individual who will be the City’s main contact.
- **Statement of Understanding and Approach**: Provide a description of the methodology the firm will use to complete the Scope of Work as detailed in this RFP. Discuss and describe the firm’s experience working with similar agencies/clients and provide a statement of the services your firm feels differentiates your firm from others. Additionally, as a part of the summary, identify the responsibilities of the City of Waterford and the responsibilities of the firm.
- **Scope of Work**: Provide details with specific task descriptions to demonstrate that the proposer has considered all aspects of the proposal and that the proposer will cover them thoroughly. Attendance at City Council, community meetings, and providing any needed informational material deemed necessary to educate the community and Council regarding projects should be included.
- **References**: Provide the following information for two (2) agencies/clients who are similar in size and scope of services requested by this proposal:
 - Name, address, and telephone number of the client;
 - Person to contact for references;
 - Time period of project(s) and brief description of the scope of services provided
- **Additional Information**: The City of Waterford has outlined the requirements of this project in as much detail as is currently known. Respondents may add information not requested in this RFP, but the information should be in addition to, not instead of, the requested information and format. Please provide any exceptions, additional information, or suggestions that will aid in the selection process (attachments are acceptable). Please keep these as **brief** as possible.
- **Cost Estimates of Consulting Fee**: Each proposal shall include a cost estimate for providing services.

*** Carefully review the Sample Agreement and Insurance Requirements. The terms of the agreement, including insurance requirements have been mandated by City Council. Your response to the Request for Proposal must indicate if you are unwilling or unable to execute the agreement as drafted as well as providing the insurance requirements. The City will consider this in determining responsiveness to the Request for Proposal.**

EVALUATION CRITERIA

An Evaluation Committee will be appointed to review all proposals. The committee will most likely consist of the following personnel: City Manager, Appointed Member from City Council, and the Public Works Director.

Based upon the proposals submitted, the Committee may select a short-list of qualified firms. The City of Waterford reserves the right to make final consultant selection based solely upon evaluation of the written proposals, without short-listing firms or conducting oral interviews, should it find it to be in its best interest to do so.

The committee members will review and evaluate the proposals, and will recommend to the City Council the firm whose proposal is most advantageous to the City of Waterford based on the following criteria, which includes, but is not limited to:

- Consultant’s proposal demonstrates a clear understanding of the Scope of Work listed in the RFP and the work to be performed.
- Recent experience with similar or like sized agencies/clients, relevant experience and technical competence of the Consultant.
- Consultant’s cost estimate for the proposed scope of work.
- Reputation of firm, structure of firm or team, positive and/or negative reports from references, proximity/availability/responsiveness, and other factors that the reviewer considers relevant.

SCOPE OF WORK

The scope of work detail should be in a format that can easily be referenced as “Exhibit A” in the attached sample agreement. In general, the consultant shall perform civil engineering services on an “on call or as-needed” basis for various projects assigned by the City. The scope of work for any one project may involve all phases of project development and may include but not be limited to the following:

1. Review correspondence from state and federal permitting agencies that require response or action from City Engineer or Public Works staff.
2. Assist City staff in processing paperwork with StanCOG and Caltrans Local Assistance regarding state and federal grant programs such as CMAQ, RSTP, SR2S, TEA, HSIP, EEMP etc.
3. Provide input to City Staff and City Council regarding the City's master plans, capital improvement program, and maintenance needs.
4. Prepare Plans, Specifications and Estimates for capital improvement projects.

5. Provide Bid Administration, Construction Management, and Inspection services for capital improvement projects.
6. Provide plan review and approval of all proposed private development projects within the City. This shall include reviewing and proposing conditions of approval for all entitlement projects (tentative maps, site plans, etc.) and reviewing and approving all encroachment permits, parcel maps, final maps, improvement plans etc.
7. Attend City Council and/or Planning Commission meetings when requested.
8. Provide all other City Engineer functions as requested by City staff and council.
9. Due to the fact that some of the City projects will be funded by Federal or State grants, the selected consulting firm must comply with requirements of Caltrans' Local Assistance Procedures Manual and the City of Waterford Quality Assurance Plan for Federal and State Funded Projects and all applicable prevailing wage laws as well as meeting the Disadvantaged Business Enterprises (DBE) goals.

SERVICES TO BE PROVIDED BY THE CITY

The services to be provided by the City include, but are not necessarily limited to, the following:

- Furnish all reasonably available records and information, including financial reports, land use planning documents, master plans, facility plans/drawings, facility inspections (ADA, Fire, Insurance, Consultant, etc.) CIP documents, environmental studies, etc.
- Provide staff support and assistance as required and agreed to in advance of the studies.
- Key City contacts will include the City Manager, Public Works Director, and Finance Manager.

ADDITIONAL INFORMATION

- The City will not reimburse the RFP respondents for any costs involved in the preparation and submission of proposals nor to prepare for and attend interviews.
- This RFP does not obligate the City to award a contract or accept or contract for any expressed or implied services.
- City reserves the right to reject or accept any and all proposals, and to waive informalities and minor irregularities in any proposal reviewed.
- City reserves the right to request any firm submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection of a consultant, and to modify or alter any of the requirements herein.
- In an attempt to reach an agreed upon contract by both parties, City reserves the right to negotiate with the proposer selected by the committee. If the parties cannot negotiate a contract, City reserves the right to negotiate with other proposers, or make no award of this RFP.
- In the event that the proposal guidelines change materially, all respondents who submit a proposal will be given an opportunity to modify their proposal in the specific areas that are impacted.
- Further, City may reject any proposal which does not conform to the instructions contained within this RFP.

CONFLICT OF INTEREST

By submission of a proposal, Consultant warrants and covenants that no official or employee of the City, nor any business entity in which an official of the City has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City.

INSURANCE

Insurance coverage for proposed services shall include general liability and property damage insurance that shall include automobile liability insurance in a combined single limit of not less than \$1 million dollars. Professional Liability Insurance (E&O) coverage of \$2 million is also required. The selected firm shall provide within ten (10) days after the notice of award is issued a copy of their existing liability insurance certificate naming City of Waterford and its officers and employees as an additionally named insured on said policies, confirmation of worker's compensation coverage, and a copy of their Professional Liability Insurance certificate. Such insurance coverage shall be maintained in full force and effect for the duration of the Contract and must be in a form satisfactory to the City.

GENERAL CONDITIONS

1. *General Information*

The City of Waterford, California will receive proposals at its office located at City Hall, 101 E Street. Proposals shall be submitted as previously outlined in "Proposal Content."

2. *Interpretation of proposals*

Should a proposer find discrepancies in, or omissions from the specifications, or should proposer be in doubt as to their true meaning, proposer may submit to the Public Works Director a written request for an interpretation thereof prior to the proposal due date. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of, or change in the proposed documents will be made only by an addendum issued to each person to whom specifications have been issued, and shall become part of any contract awarded. The City will not be responsible for any other explanation or interpretations.

3. *Addenda*

The City reserves the right to amend this RFP prior to the proposal due date. Any substantive interpretation, correction or change of the proposal documents shall be made by written addendum. Unless otherwise specified the addendum will be posted to the City of Waterford web-site www.cityofwaterford.org.

It is the proposer's responsibility to visit this web-site to insure that they have received all important addenda or revisions to the Request for Proposal prior to proposing.

Interpretation, corrections or changes of the proposal documents made in any other manner shall not be binding. Such interpretations, corrections or changes shall not be relied upon by proposer. Any addenda shall be issued by the City within a reasonable time prior to the proposal date. Any addenda issued by the City during the time of proposing shall be covered in the proposal and shall be made a part of the contract.

4. *Proposal Openings*

Proposals shall be delivered to the City of Waterford on or before the day and hour set for the opening as published in the Notice to Proposers. A proposer may withdraw his/her proposal, either personally or by written request, at any time prior to the scheduled time for opening.

5. *Late Proposals*

Any proposals received after the scheduled time of opening will be noted as received, but they will not be opened or considered.

6. *Assignment*

No assignment by the contractor or any contract to be entered into hereunder or of any part thereof, except of funds to be received there under by the contractor, will be recognized by the City unless such assignment has had the prior written approval of the City.

7. *Fiscal Year*

Obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

**CITY OF WATERFORD
CITY ENGINEER AGREEMENT**

THIS AGREEMENT, by and between the CITY OF WATERFORD, a municipal corporation, hereinafter referred to as "City", and XXXX ENGINEERING, a partnership, ("XXXXXX"), hereinafter referred to as "Engineer", provides for XXXXXXXX to be appointed city engineer for the City of Waterford in accordance with the authority of Government Code Sections 37103 and 53060 for the City.

The City specifically designates XXXXXXX, of XXXXX Engineering, License Number CXXXXXX, as the City Engineer.

The engineer and other engineers at XXXX ENGINEERING are duly licensed under the laws of the State of California and are fully qualified to perform the duties of City Engineer and to provide the services contemplated by this Agreement.

The parties do mutually agree to be bound and obligated to terms and conditions as follows:

1. Term. The term for performance of the services hereunder by the Engineer as City Engineer will commence XXXXXXXX, 2018. The Agreement shall be for a (5) five year period unless either party gives written notice to the other of its intent to renegotiate the terms of the Agreement. Such notice must be given not less than three (3) months before the end of the pending term.

2. Termination of the Agreement. This Agreement may be canceled by either party hereto by the giving of thirty (30) days written notice to the other party of their wishes to terminate the Agreement.

3. Scope of Services. The Engineer shall perform the duties of the office of the City Engineer of the City and shall use his best effort to provide engineering services in a competent and professional manner. The Engineer shall provide all engineering services to the City of the kind and nature typically provided by an in-house City Engineer's Office to a municipality unless specifically exempted by this Agreement. Engineer shall attend City Council meetings when requested at no charge to the City.

4. Time and Performance. The services performed hereunder by Engineer shall be undertaken and completed in such sequence as to insure their expeditious completion and to best carry out the purpose of the Agreement.

5. Compensation. City shall pay Engineer on an hourly rate basis as prescribed by the Rate Schedule in Exhibit "B" for performance of engineering services. Engineering services include those services listed on Exhibit "A". Engineer shall attend City Council meetings when requested at no charge to the City. For all other engineering services not listed in Exhibit "A", the City agrees to pay the Engineer at the rates as set forth in Exhibit "B". In addition to paying the engineering fees as set forth in Exhibit "B", City shall reimburse the Engineer for customary and reasonable costs and expenses incurred by the Engineer as set forth in Exhibit "B".

6. Billing Procedures and Monthly Statements. The Engineer shall submit to the City, within 30 days after the end of each calendar month, an itemized statement of the professional services by project or funding source provided in the time expended providing those services in the form customarily submitted by the Engineer to clients which are billed on an hourly basis. The Engineer shall include in the

monthly statement cost and expense items, and project details. The parties acknowledge that the payment of all monthly statements is expected to be made within 30 days of the billing date.

7. Work Performed. No work shall be performed by Engineer except general engineering and related services, unless directed to do so by the City Manager or the City Council. Engineer agrees that an engineer of XXX Engineering must be already versed in the facets of the Grant Funding process for public works projects for a General Law City, federal, state and local. Engineer, must already be familiar with the CAL TRANS process regarding acquiring encroachment permits and construction by the City in State Rights of Ways.

8. Additional Services. Additional services beyond those set forth in Exhibit "A" and subject to the engineer rates set forth in Exhibit "B" include, but are not limited to, the following areas:

- a. Planning;
- b. Administration;
- c. Construction Management;
- d. Surveying.

9. Cost Principles. XXXXX agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31,000 et seq., shall be used to determine the allowability of cost individual items.

XXXXXX also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to XXXXX that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by XXXX to City.

Subcontracts in excess of \$25,000.00 shall contain this provision.

10. Amendments. This Agreement may be amended at any time by mutual written agreement of the parties hereto.

11. Return of File and Client Property. After Engineer's services are completed, Engineer will, upon City's request in writing, deliver the file(s) to the City, along with any property of the City in Engineer's possession. City's file(s) and property include correspondence, transcripts, engineering documents, exhibits, maps, and other items reasonably necessary to City's business and to its continued and future engineering service needs, whether City has paid for them or not. City's file(s) and property include all work performed by the Engineer on behalf of the City or its continued engineering needs.

12. Retention of Records/Audit. For the purposes of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; XXXX, subcontractors, and City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, any books, records, and documents of XXXXX that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

13. Independent Contract. Engineer is an independent contractor. Engineer is engaged on a part-time basis. Engineer is responsible for providing and maintaining its own staff, facilities, resources, and benefits. It is the Engineer's sole responsibility to assure the City that the Engineer's professional and administrative staff are adequately trained and the City shall have no obligation to pay for training of the Engineer or staff or the provisions of professional resources or material. The Engineer shall stand ready, willing and able to perform the duties for the City pursuant to this Agreement as called upon by the City Council or the City's designated representative. It is understood, however, that the Engineer is otherwise free to engage in the private practice of engineering so long as its practice does not put it in conflict with the City. In addition to the proscriptions regarding conflicts of interest imposed on the Engineer, the Engineer represents that no member of the firm shall appear before any council, commission, committee, or agency of the City for a period of six (6) months from the date of termination of the Engineer's employment as City Engineer for the purpose of representing any other client of the Engineer's before such City Council, commission, committee, or other agency.

14. Licensed Engineer. XXXXXXXXXXXX is a licensed engineer in the State of California, License No. CXXXXXX. Any other employees or officers of Engineer providing services for the City of Waterford in connection with this Agreement shall be duly licensed under the laws of the State of California and shall be qualified to perform the duties and provide the services by this Agreement.

15. Assignment and Delegation. This Agreement contemplates the personal professional services of the Engineer and this Agreement, or any portion thereof, shall not be assigned or delegated without the prior written consent of the City.

16. Insurance. The Engineer represents and discloses to the City that he maintains professional, general liability insurance, including errors and omissions coverage, in excess of \$1,000,000 per occurrence and \$1,000,000 per policy term. The insurance maintenance by the Engineer shall be consistent with the requirements set forth in Exhibit "C" attached hereto. The Engineer is required to provide the City with certificates of insurance certifying the aforementioned insurance coverage.

17. Inspection. Engineer shall furnish City with every reasonable opportunity for City to ascertain that the Services of Engineer are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Engineer of any of its obligations to fulfill the Agreement as prescribed.

Engineer and any subcontractor shall permit the City, the State, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

18. Conflict of Interest. A. Engineer covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City hinder Engineer's performance of the Services. Engineer further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of City. Engineer agrees at all times to avoid conflicts of interest, or the appearance of any conflicts of interest in the performance of the Agreement.

B. Engineer is not a designated employee within the meaning of the Political Reform Act because Engineer:

1. Will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of City or of any City official; and

2. Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

19. General. Engineer shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Engineer represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Engineer to practice its profession. Engineer shall maintain a City business license.

20. Prevailing Wage. Engineer and Engineer's sub-consultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter I, Article 2. Copies of the applicable wage determination are on file at City's Public Works Department.

21. Equal Employment Opportunity. Engineer is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Engineer will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Engineer will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

22. Covenant Against Contingent Fees. The Engineer warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the engineer; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the City has determined that construction areas may be located in areas open to public traffic. The City shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Engineer shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

B. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

24. Statement of Compliance. Engineer's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Engineer has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

25. Debarment and Suspension Certification. A. The Engineer's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Engineer has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Engineer responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

26. Rebates, Kickbacks, or Other Unlawful Consideration. The Engineer warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

27. Indemnity. XXXX agrees to indemnify and hold harmless the City, its officers, agents and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of XXXXX. The fees, incurred by City in defendant against claims ultimately determined to be due to negligent acts, errors, or omissions of the XXXX.

28. Nonexclusive Agreement. The City may contract with other individuals or entities to provide engineering services. This is a nonexclusive agreement.

29. Notices. Notices regarding this Agreement shall be given to the parties at the following addresses:

City: City of Waterford
P. O. Box 199
Waterford, CA 95386

Engineer: XXXXX
XXXX ENGINEERING
XXXXXX
XXXX, CA 95XXX

30. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

31. Entire Agreement. This Agreement contains the entire understanding of the parties regarding their rights and obligations hereunder. Any alleged oral representations or modifications concerning this Agreement and the subjects thereof shall have no force or effect unless reduced to a writing signed by both parties. This Agreement supersedes any previous agreements between the parties for the provision of Interim City Engineer services.

32. Goodwill. The parties hereto agree that it is in their best interests to maintain harmonious relations in the fulfillment of the engineering requirements and that every effort will be made to provide timely, efficient and courteous service to those who require engineering services.

33. Captions. The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement or its terms, or in any way affect it.

34. Disadvantaged Business Enterprises (DBE) Participation.

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. Participation by DBE consultant or sub-consultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE sub-consultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing,

managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Sub-consultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Sub-consultants" is submitted to the Contract Administrator.
- K. If a DBE sub-consultant is decertified during the life of the contract, the decertified sub-consultant shall notify CONSULTANT in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the Contract, the sub-consultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

IN WITNESS WHEREOF, the parties have hereunto set their hands this XX day of XXXX 2018.

"CITY"

CITY OF WATERFORD

"ENGINEER"

XXXX ENGINEERING

By: _____
XXXXXX
City Manager

XXXXXXXXX
Engineer

ATTEST:

Miranda Lutzow, City Clerk

APPROVED AS TO FORM:

Corbett J. Browning, City Attorney

EXHIBIT "A"

CITY ENGINEER SERVICES – SCOPE OF WORK

XXXX Engineering will provide on-call consulting City Engineer services to the City of Waterford to include (but not limited to) the following:

1. Review correspondence from state and federal permitting agencies that require response or action from City Engineer or Public Works staff.
2. Assist City staff in processing paperwork with StanCOG and Caltrans Local Assistance regarding state and federal grant programs such as CMAQ, RSTP, SR2S, TEA, HSIP, EEMP etc.
3. Provide input to City Staff and City Council regarding the City's master plans, capital improvement program, and maintenance needs.
4. Prepare Plans, Specifications and Estimates for capital improvement projects. Assist City staff and City contract consultants in preparation of Request for Proposal packets.
5. Provide Bid Administration, Construction Management, and Inspection services for capital improvement projects.
6. Provide plan review and approval of all proposed private development projects within the City. This shall include reviewing and proposing conditions of approval for all entitlement projects (tentative maps, site plans, etc) and reviewing and approving all encroachment permits, parcel maps, final maps, improvement plans etc.
7. Attend City Council and/or Planning Commission meetings when requested.
8. Provide all other City Engineer functions as requested by City staff and council.

The services above will be provided on an "as needed" basis, as directed by the City Manager, and billed monthly at Time & Materials.

EXHIBIT "B"

JOB DESCRIPTION HOURLY RATE

Planning:

PLANNER \$ XXX.00

Engineering:

PRINCIPAL \$ XXX.00

CIVIL ENGINEER \$ XXX.00

PROJECT MANAGER \$ XXX.00

DESIGNER \$ XX.00

SENIOR DRAFTER / CADD \$ XX.00

DRAFTER / CADD \$ XX.00

EXPERT WITNESS \$ XXX.00

Administration:

CLERICAL \$ XX.00

ADMINISTRATIVE ASSISTANT \$ XX.00

OFFICE MANAGER \$ XX.00

Construction Management:

CONSTRUCTION MANAGER \$ XXX.00

CONSTRUCTION INSPECTOR \$ XX.00

Surveying:

OFFICE SURVEYOR \$ XXX.00

ASSISTANT OFFICE SURVEYOR \$ XX.00

TWO-MAN SURVEY CREW \$ XXX.00

PUBLIC WORKS SURVEY CREW \$ XXX.00

Materials:

The following services are billed at our cost plus XX%

- Sub-consultant fees
- Commercial delivery services (Fed Ex, California Overnight, messenger services etc)
- Copies and blue prints of plans beyond those required by city or county for plan review.

“Exhibit C”

Insurance

Consultant shall maintain limits no less than:

1. General Liability:
\$1,000,000 per occurrence for bodily injury, personal injury and property damage.
2. Automobile Liability:
\$1,000,000 per accident, bodily injury and property damage.
3. Employers Liability:
\$1,000,000 per accident, bodily injury or disease.
4. Workers Compensation: Statutory limits as required by the State of California.

Consultant shall provide City with Certificates of Insurance certifying the above insurance requirements.

Indemnity

Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney’s fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant’s performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the City. Should conflict of interest principles preclude a single lawyer from representing both City and Consultant, or should City otherwise find Consultant’s legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorney’s fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Compliance

The Consultant shall keep itself fully informed of and shall observe and comply with and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with all federal, state, county and municipal laws, ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

Billing

The Consultant shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until **six (6) months** after the final payments under this Contract are made to the Consultant.

Termination Upon Notice

This Agreement may be terminated by the City by giving the Consultant **thirty (30) days** written notice to the other party.

Termination for Unsatisfactory Performance

Should the City at any time become dissatisfied with the Consultant's performance under this Agreement, City may terminate this Agreement immediately upon giving notice in writing to the Consultant. The City shall be the sole judge as to whether the performance of the Consultant is satisfactory.

Time is of the Essence

Time is of the essence of this Agreement.

Arbitration

Any dispute arising under this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction.

Notices

Any notices to be given hereunder by either party to the other, may be affected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the introductory paragraph of this agreement, but each party may change address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of **five (5) days** after mailing.

Entire Contract

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing, signed by the party to be charged.

Partial Invalidity

Partial invalidity of this agreement shall not affect the remainder.

Governing Law

The validity of this agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to and in accordance with the laws of the State of California.