

PROFESSIONAL SERVICES AGREEMENT  
FOR  
LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT  
(CIP 301-657)

This Agreement is made and entered into as of the 27<sup>th</sup> day of January, 2020 by and between the City of Foster City hereinafter called "CITY" and Tanner Pacific, Incorporated hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CITY desires to engage CONSULTANT to provide professional services in the CITY;
- B. That CONSULTANT is qualified to provide such services to the CITY and;
- C. That the CITY has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

- 1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

- 2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement without cause by giving written notice not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, CITY shall compensate CONSULTANT for services rendered, and reimburse CONTRACTOR for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of CITY to terminate this Agreement for

cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.

3. Compensation; Expenses; Payment. CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit "B" hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum six million six hundred ninety eight thousand, eight hundred seventy seven (\$6,698,877) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) evidenced by motion duly made and carried.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.
8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, City of Foster City or Estero Municipal Improvement District, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of CONSULTANT, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of CONSULTANT to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONSULTANT to indemnify City of Foster City and Estero Municipal Improvement District, its Council, boards, commissions,

officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

12. Insurance. CONSULTANT shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to CONSULTANT's services to be performed hereunder covering CITY's risks in form subject to the approval of the City Attorney and/or CITY's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CONSULTANT's vehicle usage in performing services hereunder)
<sup>1</sup> Professional Liability	\$1,000,000 per claim and aggregate

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the CITY as an Additional Insured. Furthermore, the requirements for coverage and limits

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<sup>1</sup> Note: Professional liability insurance coverage is not required if the CONSULTANT is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.) Please check and initial the following if professional liability is **NOT** required for this agreement.  Recommended \_\_\_\_\_ [Project Manager]  Approved \_\_\_\_\_ [Risk Manager]

shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

CONSULTANT agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by CONSULTANT shall agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. CONSULTANT shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the CITY prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, CONSULTANT shall furnish CITY, on the form included as Exhibit D or similar form, with certificates and copies of information or declaration pages of the insurance required hereunder to be included as Exhibit C hereto. With respect to evidence of commercial general liability and automobile liability insurance coverage, CONSULTANT must also include in Exhibit C the following original endorsements:

- (a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after CITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;
- (b) Naming the City of Foster City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and
- (c) Providing that CONSULTANT's insurance coverage shall be primary insurance with respect to City of Foster City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by CITY for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of CONSULTANT's insurance and not contributory with it. CONSULTANT and its insurer may not seek contribution from CITY's insurance or self-insurance.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or

excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY, to the extent required by this Agreement, before the CITY's insurance or self-insurance may be called upon to protect CITY as a named Insured.

All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named CONSULTANT/Named Insured or CITY.

CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which

prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of Foster City  
610 Foster City Boulevard  
Foster City, CA 94404-2299  
Attention: Norm Dorais

CONSULTANT: Tanner Pacific, Inc.  
Michael Jaeger, PE, Principal  
751 Laurel Street, Suite 609  
San Carlos, CA 94070  
925-382-1950  
[mjaeger@tannerpacific.com](mailto:mjaeger@tannerpacific.com)

16. Non-Assignment. This Agreement is not assignable either in whole or in part.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.



- 21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
- 22. Entire Agreement. This Agreement, including Exhibits A, B, C and D, comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: \_\_\_\_\_

\_\_\_\_\_  
Catherine Mahanpour, Mayor

ATTEST:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jean Savaree, City Attorney

CONSULTANT

Dated: \_\_\_\_\_

\_\_\_\_\_  
William Tanner, PE, CEO



EXHIBIT A  
SCOPE OF WORK AND SCHEDULE  
FOR  
LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT  
(CIP 301-657)

The scope of the work to be provided by CONSULTANT, Tanner Pacific Inc. (TPI) for construction management services shall be for the project referred to as Levee Protection Planning and Improvements Project (CIP 301-657). The project includes installation of approximately 2500 feet of concrete wall; 5,000 feet of concrete block mechanically stabilized earth (MSE) wall; 22,000 feet of sheet pile wall; and more than 150,000 cubic yards of imported fill. Professional services to be provided by CONSULTANT for construction management of Levee Protection Planning and Improvements Project (CIP 301-657) shall include the following:

TASK 1.0 – CONSTRUCTABILITY AND BID ASSISTANCE

Upon receiving written Authorization to Proceed, CONSULTANT shall perform all work required to perform constructability and bid assistance activities including the following:

- 1.1 Review and understand the construction contract documents.
- Detailed review of project plans, specifications and all permit conditions.
  - Provide written comments to City and Schaaf & Wheeler for review and comment.
  - Meet with City, Schaaf & Wheeler and any other consultants to confirm any and all recommendations and comments to finalize documents for bidding.
  - Perform a final review to confirm bid documents are ready for bidding.

Deliverables:

1. Compiled set of written comments organized by priority of need for inclusion in final bid set.

- 1.2 Set up Electronic File System in Procore

- CONSULTANT will set up a Procore project site with access for all project team members.
- All documents will be submitted by the contractor electronically in this system for proper tracking. Reports can be produced at any time noting completed and outstanding items.
- At the request of the City, CONSULTANT staff will also keep hard copy files of all documents, at the project office site once this is set up, and maintain project document files.

Deliverables:

1. Accessible web hosted file system for use by Foster City, Schaaf & Wheeler and contractor. Hosted and managed by CONSULTANT.
2. Each party will have specific levels of access to the file system.

- 1.3 Assist with Contractor Pre-Qualification

- Assist with developing a Pre-Qualification package with the assistance of the City Project Manager and City Attorney, as needed.
- Contact contractors about the Pre-Qualification package to solicit interest.
- Coordinate review of submittal packages with City and Design team to confirm they meet all the pre-qualification requirements.

- Develop the final list of pre-qualified contractors to bid for this project.

Deliverables:

1. Pre-Qualification procedure to provide Foster City with a list of qualified bidders based on specific requirements and criteria. This will be developed with City staff and Schaaf & Wheeler input.

1.4 Create Project Work Plan

- Create a Work Plan for the CM team that includes basic schedule elements, milestones as necessary and deliverables associated with these milestones
- Specific items include, but are not limited to, monthly project construction updates, initial baseline schedule, cash flow projections, updates for council meetings as necessary.
- Plan shall include a detailed schedule for Task 1.0 that includes key milestones prior to construction (i.e., pre-qualification process, constructability review, advertising, approval of plans and specifications and call for bids, dates requiring City Council action, etc.)

Deliverables:

1. Project Work Plan.

TASK 2.0 –CONSTRUCTION MANAGEMENT AND SUPPORT SERVICES

Upon receiving written Authorization to Proceed, CONSULTANT shall perform all work required to administer the construction contract and implement the Project, including the following:

2.1 Pre-Construction Services

- Assist in the coordination of environmental training as required by all permits for CONSULTANT and Contractor.
- Review USA markings in the field and note potential conflicts with the upcoming work. Discuss potential ideas to resolve any conflicts noted.
- Photograph and video all work areas along the levee. This will include access points, storage areas, haul routes, neighboring parks or other significant facilities that could be impacted by construction activities.
- Create agenda for and facilitate pre-construction meeting. This will include inviting various utility owners, and other stakeholders the City believes have input prior to construction.
- Distribute minutes from the Pre-Construction meeting to all attendees and stakeholders.

2.2 Construction Administration

- Coordination
  - Conduct/facilitate weekly progress meetings and other meetings as necessary for the duration of the project.
  - Prepare and distribute agenda and meeting minutes to all attendees and needed Stakeholders.
  - Produce Weekly Statement of Working (or Calendar) Days.
  - Produce Resident Engineer / Construction Manager Report on a frequency agreed to by the City and CONSULTANT.
  - Third Party (PG&E, AT&T, etc.) Construction Coordination
  - Maintain log of third-party work, e.g., PG&E, AT&T, etc., after notice to proceed

- issuance for Task Order No. 1.
  - Request third parties to perform construction work, as required.
- Maintain communications and coordinate with the CITY, its Contractor, and its Designer. Process Contractor's Requests for Payment (Progress Billings)
  - Review, comment on, and recommend approval of Contractor's Requests for Payments.
  - Process Contractor's Approved Requests for Payments.
  - Notify City immediately of stop notices.
- Cost/Financial Management
  - Review Contractor's monthly progress payment request for accuracy.
  - Work together with Contractor to confirm that payment request is accurate prior to submitting to City for review.
  - Submit Contractor pay request with cover sheet produced by CONSULTANT summarizing pay request for current month, payments to date and balance remaining.
- Cash Flow Projections
  - Develop cash flow projections for all project spending, including spending by construction management team, contractor, and other third parties, for others to determine optimum timing for bond sales, drawdowns, and contingency management.
  - Develop master schedule for project
  - Assist the City with the development a funding model that considers project schedule changes to match available funding.
  - Use refined estimates of costs to develop a cost-loaded critical path schedule that will allow for analysis of project timing and resultant cash flow needs.
  - Monitor project-specific spending, provide an understanding of when funding will be required, and document expenditures.
- Monthly Progress Reports
  - Prepare and submit monthly progress report narrative/bulletin for public consumption, along with monthly payment invoice. Shall include:
    - Overview of work accomplished, including representative photos
    - Work to be completed the following month
    - Updated narrative of schedule of work
  - Prepare quarterly progress Staff Reports for placement on the City Council clipboard, that include key project milestones completed, expenditures, and upcoming work for following quarter.
  - Prepare presentations to City Council as needed to report out project progress.
- Public Outreach
  - Assist City of Foster City Public Outreach Staff by preparing the following:
    - Public notices for upcoming community meetings
    - Flyers, written material explaining the project, power point presentations (as necessary), and coordinate contractor assistance, if needed.
    - Project updates to City Project website at least once per month.
    - Submittal of wayfinding signs for the Bay Trail to BCDC for their review and approval.
    - Updating the wayfinding submittal as necessary to receive BCDC approval.
  - Assist CM team with neighborhood notifications and outreach
    - Coordinate with Contractor to provide flyers, construction advisory notices, and door hangers. Distribute materials to affected property owners near construction site. Assist with the creating of notifications for mailers and website of upcoming work activities, truck traffic routes and potential public impacts.

- Conduct neighborhood meetings as needed.
  - Establish 800-phone number for project inquiries from the public to be posted on all project signs, distributed with all notices and placed on project website already in place and set up by the City.
  - Receive initial phone messages from 800 number to determine priority of call. Notify CM team of high priority issues immediately.
  - Maintain a log of all calls through Procore along with responses and final resolution of issues.
- Change Management
  - Maintain Log of Potential Change Orders in Procore.
  - Maintain Log of Change Orders in Procore.
  - Coordinate, review, and evaluation of potential change orders and cost estimates/quotations.
  - Inspect and evaluate site conditions that are perceived to be different than shown in the contract documents.
  - Resolve and/or facilitate resolution of conflicts with plans and existing field conditions, as well as, conflicts with contract documents, if any.
  - If a contract change order is required, produce contract change order, change order memorandum, independent cost estimate, time impact analysis (if applicable) for the CITY's approval. City to provide guidance on cost authority levels for City project personnel for agreement to Change Orders.
  - Review, gather, and evaluate information for resolution of potential claims or disputes.
  - Field Orders (FO) and Field Directives (FD)
    - In the event that the Contractor encounters a time sensitive problem where it is not practical to take time to negotiate a settlement, the CM will issue a FO. All work done under a FO will be completed on a time and material basis. The CM and the City will execute the FO
    - The City shall provide guidance on the cost authority levels for City project personnel for agreement to FO Not To Exceed limits.
- Schedule Management
  - Review, comment on, and recommend approval of contractor's baseline schedule and updates, if any.
  - Evaluate contractor's schedule for actual versus planned progress, and document all scheduling discrepancies and deviations.
  - Review, comment on, and recommend approval of contractor's monthly schedule update submittal.
  - Review, comment on, and recommend approval of contractor's Time Impact Analyses (TIA) for change orders.
- Request for Information (RFI) Coordination
  - Receive all requests for information (RFIs) from the Contractor and determine if the request is a valid RFI; if not, Tanner Pacific will return the RFI to the Contractor
  - Route all other RFIs to the City, Schaaf & Wheeler and any design sub-consultant as applicable.
  - Review the response, verify acceptability of response and transmit the RFI response to the contractor.
  - Maintain a log all RFIs and associated responses in Procore.
  - Coordinate all comments to and from the Design Team
- Submittal Coordination
  - Create and maintain submittal log in Procore.
  - Receive and review all submittals from the contractor for compliance with contract documents prior to forwarding to Schaaf & Wheeler.
  - If submittals are incomplete, CONSULTANT will return the submittal to the

- contractor identifying the missing information.
  - Manage routing through the online Procore system and coordinate all comments to and from Schaaf & Wheeler and the City.
- Materials Submittal Reviews and Materials Verification Testing
  - Review and comment on Contractor's material test submittals for conformance with contract requirements.
  - Perform intermittent verification testing of materials to verify materials meet contract requirements.
  - Coordinate material testing and specialty inspections (to be furnished by Cal Engineering & Geology) as required in the contract documents.
- Inspection of Construction Work Product
  - Provide field observation services to monitor compliance with Contract Documents.
  - Prepare a daily observation report documenting field activities, field crew staffing levels, Contractor equipment, and field problems.
  - Maintain the database, implemented by Tanner Pacific, for daily observation reports and photographs.
  - Provide photographic documentation of The Project during construction and maintain photographs of field activities for status monitoring of the project (including materials and equipment delivered to site).
  - Maintain record drawings indicating location and size of changes not covered in the original approved drawings and specifications, including those resulting from change orders, shop drawings, and field conditions encountered during progress of work.
  - The CONSULTANT will comply with appropriate regulatory, project and Owner regulations regarding necessary safety equipment and procedures used during performance of the CONSULTANT's work and shall take necessary precautions for safe operation of the CONSULTANT's work, and the protection of the CONSULTANT's personnel from injury and damage from such work.
  - Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT's employees or sub-consultants at the construction/project site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending, or coordinating their work in accordance with the Contract Documents, Owner regulations, and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control over any Contractor or other entity or their employees in connection with their work or any health or safety precautions
  - CONSULTANT will, if observed, bring to the attention of CONTRACTOR's foreman/superintendent any situation or operation that appears to be unsafe or appears not in accordance with industry standards for safety.
  - Track any extra work performed.
  - Typical construction hours will be from 8 am to 5 pm, Monday through Friday and 9 am to 5 pm Saturdays, unless otherwise approved by the City.
  - Coordinate access to the site for inspections and site visits as needed.
- Storm Water Pollution Prevention
  - Review storm water pollution prevention plan.
  - Perform quality assurance inspections of best management practice implemented

- as part of an approved Storm Water Pollution Prevention Plan.
- Audit Contractor's storm water pollution prevention records.
- Review contractor's compliance with stormwater regulations and permits (SWPPP), environmental documents, and mitigation measures.

### TASK 3.0 – PROJECT CLOSE OUT

Upon receiving written authorization to proceed, CONSULTANT shall perform all work required to close out the project, including the following:

- Site inspection(s) to determine if facilities are complete and in compliance with contract documents.
- Develop corrective item work lists (punch lists) and inspection of corrective actions performed.
- Recommend retention release to contractor
- Review Contractor's as-built drawings for accuracy and completeness. Provide comments as necessary and verify that Contractor incorporated comments into as-built drawings. Coordinate final submittal of organized and complete record drawings in accordance with contract documents.
- Assist with preparing project closeout forms, including Closeout Memorandum, Capital Asset Infrastructure form, and Capital Asset Infrastructure Disposal form.
- Organize and verify completeness of project records.
- Verify contractor has made all payments and that all required releases including lien release and release of claims have been submitted by contractor.
- Prepare and submit final construction report.

### TASK 4.0 – WARRANTY PERIOD ASSISTANCE

Upon receiving written authorization to proceed, CONSULTANT shall perform all work required to perform the warranty inspection and oversee correction of the warranty items, including the following:

- Perform one-year warranty inspection one month prior to the anniversary date of Notice of Completion.
- Prepare a punch list identifying corrective action required under warranty.
- Coordinate necessary repair work with Contractor.
- Inspect repair work and document that repair work was completed in accordance with the contract documents.

### SCHEDULE

- A kick-off meeting shall be held within one week of execution of the agreement;
- **Task 1** – Pre-construction support including constructability review and bid assistance will be performed from February 2020 through May 2020;
- **Task 2** – Administration of the Construction Contract and Construction Support Services will be performed from June 2020 through January 2023;
- **Task 3** – Project Closeout activities will be performed from February 2023 through April 2023;
- **Task 4** – Warranty Inspection is anticipated to be performed in March 2024.

The durations may be adjusted as required by the City with sufficient notice.

The following terms have their respective designated meanings when used in this Agreement:

“CONSULTANT” is Tanner Pacific, Inc (TPI Staff)

“CM TEAM” is comprised of the following:

- TPI Staff (Construction Manager, Office Engineer, Inspectors)

- Public Outreach Tasks (Data Instincts)

- Geotech and Materials Testing (Cal Engineering & Geology and other materials testing technicians as needed)

- Schedule/Financial Forecasting (MCK)



## MANAGEMENT AND PROJECT CONTROLS

In performing the Scope of Services, the CONSULTANT shall, at a minimum, execute the management and project controls described below:

1. CONSULTANT shall designate a Resident Engineer / Construction Manager acceptable to the CITY. The Resident Engineer / Construction Manager will be responsible for the work including developing work plans; implementing the project management procedures and controls; and maintaining effective communications among the sub-consultants, the CITY, and other involved agencies and organizations for the duration of the project.

If CONSULTANT wishes to propose a substitute at any time during the duration of the project, the CITY shall approve CONSULTANT's Resident Engineer / Construction Manager (or any key team members identified).

2. The working interface between the CONSULTANT and the CITY shall be defined as follows:

- 2.1. Within fifteen (15) calendar days after receipt of the Notice to Proceed, CONSULTANT shall submit to the CITY a draft monthly invoice format that shall include:

- List of CONSULTANT personnel, hourly rate and hours expended during the month in question along with a subtotal for CONSULTANT staff labor effort.
- Itemized list of any sub-consultant staff who performed professional services during the month in question, hourly rates and hours worked during that time period and a subtotal for the subconsultants.
- Summary of all costs for labor, sub-consultant labor with mark up, other direct costs and all supporting material from the sub-consultants.

- 2.2. To support each invoice, the CONSULTANT shall furnish project updates that shall include the following:

- a) A narrative progress report (Outreach bulletin per Task 2) of specific accomplishments during the reporting period, problems encountered, or anticipated accomplishments scheduled for the next reporting period, and results of quality control programs, technical evaluations, inspections, etc.
- b) A cost summary for each specific task, that shows:
  - b.1. The current period and cumulative expenditures to date.
  - b.2. The approved budget.
  - b.3. A comparison of the estimated cost with the approved budget to show any variance.

Payment shall be made upon the completion of each specific consultant task as delineated in the project schedule.

- 2.4. CONSULTANT shall be available for consultation with the CITY's Project Manager at all reasonable times and shall immediately advise the project manager of requests, technical decisions, or problems that may materially affect a project's scope, quality, schedule, or cost.

EXHIBIT B

CONSULTANT'S FEE SCHEDULE AND REIMBURSIBLE EXPENSES  
FOR  
LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT  
(CIP 301-657)

	<b>Personnel/ Service</b>	<b>Total Hours</b>	<b>Hourly Rate</b>	<b>Total Fee</b>
	<b>Task 1: Pre Construction</b>			
	<b>Task 1 Total</b>			<b>\$57,692</b>
	<b>Task 2: CM and Support Services</b>			
	<b>Task 2 Total</b>			<b>\$6,413,571</b>
	<b>Task 3: Project Close Out</b>			
	<b>Task 3 Total</b>			<b>\$160,462</b>
	<b>Task 4: Warranty Inspections</b>			
	<b>Task 4 Total</b>			<b>\$31,152</b>
	Inspector Vehicles (\$1,200/mo x 30 mos)			<b>\$36,000</b>
	<b>PROJECT TOTAL</b>			<b>\$6,698,877</b>



## Construction Management & Support Services

City of Foster City

Levee Protection Planning and Improvements Project

### FY 2020/2022 Fee Schedule

Staff Title	Range of Hourly Rates <sup>1</sup>
Principal .....	\$200.00 - \$295.00
Senior Project/Construction Manager .....	\$180.00 - \$245.00
Project/Construction Manager .....	\$125.00 - \$195.00
Senior Project Engineer .....	\$125.00 - \$180.00
Project Engineer .....	\$100.00 - \$165.00
Inspector <sup>2</sup> .....	Prevailing Wage
Administrative Assistant .....	\$125.00
Intern .....	\$55.00

#### Explanations

- Services are provided on an hourly and expense basis.
- <sup>1</sup> Effective dates 1/1/20 - 12/1/22
- <sup>2</sup> Subject to California Prevailing Wage

#### Subconsultants

All Subconsultants invoiced at cost plus 10 percent.

#### Expenses

Direct expenses, as listed below, incurred in connection with the work, will be at cost:

- Delivery services
- Outside reproduction
- Travel outside the Bay Area
- All other extraordinary expenses invoiced at cost

Vehicles used in conjunction with the work will be at the federally approved mileage rates or at negotiated monthly rate.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

## EXHIBIT C

### INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in Section 12 - INSURANCE of the Agreement on the attached form. No substitute form will be accepted.

#### **ATTACHED**

1. Insurance Coverage Form

**EXHIBIT D**

**This INSURANCE COVERAGE FORM modifies or documents insurance provided under the following:**

Named Insured: \_\_\_\_\_ Effective Work Date(s): \_\_\_\_\_

Description of Work/Locations/Vehicles: \_\_\_\_\_

**ADDITIONAL INSURED:** **City of Foster City/Estero Municipal Improvement District (CITY)**  
**610 Foster City Boulevard, Foster City, CA 94404**  
**Attention:** \_\_\_\_\_  
**Contract Administrator**

<b>Endorsement and Certificates of Insurance Required</b>	<b>Insurer</b>	<b>Policy No.</b>
The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)		
<input type="checkbox"/> <b>General Liability:</b> (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/> <b>Auto Liability:</b> the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/> <b>Other:</b>		
<b>Certificates of Insurance Required (no endorsement needed) (Check all that apply)</b>	<b>Insurer</b>	<b>Policy No.</b>
<input type="checkbox"/> <b>Workers Compensation:</b> work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/> <b>Professional Liability:</b>		

**PRIMARY/NON-CONTRIBUTORY:** This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

**SEVERABILITY OF INTEREST:** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

**PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS:** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

**CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

**WAIVER OF SUBROGATION:** The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

**Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.**  
**SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER**

I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)**

**ORGANIZATION:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** (       ) \_\_\_\_\_

**DATE ISSUED:** \_\_\_\_\_