

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into as of November 30, 2023, by and between the CITY OF IRVINE, a municipal corporation ("City"), and T.Y. LIN INTERNATIONAL, a North Carolina foreign corporation ("Consultant").

PART I

FUNDAMENTAL TERMS

- A. Location of Project:** The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.
- B. Description of Services/Goods to be Provided:** Construction Management, Inspection, Material Testing, and Design Support During Construction Services for Jeffrey Open Space Trail/I-5 Bicycle and Pedestrian Bridge, CIP 341502 in accordance with PART IV, Scope of Services, included herein.
- C. Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on December 1, 2023 ("Commencement Date") and shall continue through June 1, 2026.
- D. Party Representatives:**

- D.1. The City designates the following person/officer to act on City's behalf:
Anthony Caraveo, email: acaraveo@cityofirvine.org
- D.2. The Consultant designates the following person to act on Consultant's behalf:
Joseph Smith, email: joseph.smith@tylin.com

Consultant Information

Address for Notices and Payments:

404 Camino del Rio South, Suite 700
San Diego, CA 92108

Attn: Joseph Smith
Telephone: 619-692-1920
Email: joseph.smith@tylin.com

- E. Notices:** Consultant shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Consultant at the address set forth above.
- F. Attachments:** This Agreement incorporates by reference the following Attachments to this Agreement:
- F.1. Part I: Fundamental Terms
- F.2. Part II: General Provisions
- F.3. Part III: Special Provisions

21024

F.4. Part IV: Scope of Services

F.5. Part V: Budget

- G. Integration:** This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

{Signatures follow on next page}

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

By: 
DocuSigned by:
D0B786D14D324B0...
Sean Crumby

Its: Director of Project Delivery &
Sustainability

By: 
DocuSigned by:
7809AA719A2B4C7...
Oliver C. Chi

Its: City Manager

By: 
DocuSigned by:
CF36A9EA8445497...
Farrah N. Khan

Its: Mayor of the City of Irvine

Attest:

By: 
DocuSigned by:
0FCAD91F02E547D...
Carl Petersen

Its: City Clerk

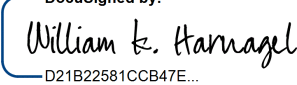
APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: 
DocuSigned by:
DABE8686180C4BB...
Jeffrey Melching

T.Y. LIN INTERNATIONAL,

By: 
DocuSigned by:
AC955E02F3C7406...
Philip Yartey

Its: Senior Vice President

By: 
DocuSigned by:
D21B22581CCB47E...
William K. Harnagel

Its: Chief Financial Officer

PART II

GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Consultant, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. City approval and/or payment for work claimed by Consultant as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Consultant without additional consideration due. It is expressly understood by Consultant that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Notwithstanding any other provision herein, Consultant agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Consultant to review the quality of the work and resolve matters of concern; (ii) requiring Consultant to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Consultant for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Consultant shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If

the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact in writing and shall not proceed except at Consultant's risk until written instructions are received from the City's Representative.

1.7 Identity of Persons Performing Work.

- A.** Consultant represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.
- B.** Consultant represents that the tasks and services required hereunder will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Consultant will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.
- C.** This Agreement contemplates the personal services of Consultant and Consultant's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant. Neither this Agreement nor any interest therein may be assigned by Consultant, except upon written consent of City.

1.8 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Consultant of any liability hereunder without the express written consent of City.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Consultant's indemnification obligations, Consultant shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees, and/or subconsultants. In the event that Consultant subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Consultant and such subconsultant shall require the subconsultant to maintain the same policies of insurance that the consultant is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The Insurance obligations under this agreement shall be (1) all the Insurance coverage and/or limits carried by or available to the Consultant;

or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Consultant under this agreement.

The policies and minimum amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Consultant's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Consultant's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Consultant's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

C. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Consultant providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

- (1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

In the performance of the work under this Agreement, if Consultant does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Consultant agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Consultants failure to provide such worker's compensation insurance. Consultant agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

- D. Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

If the consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the consultant.

- E. Evidence of Insurance:** Consultant shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided. The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Consultant an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder: City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668

- F. Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include

any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not**:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Consultant
4. Contain any other exclusion contrary to the Agreement.

G. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions must be approved in writing by the City.

H. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

I. Insurance of Subconsultants. Consultant shall be responsible for causing Subconsultants to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subconsultant's policies.

2.2 Indemnification. Consultant shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Consultant, its employees, agents, representatives or subconsultants which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

2.2.1 Consultant shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

2.2.2 Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

2.2.3 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts

required by this Agreement does not in any way relieve the Consultant from liability under this section.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Consultant shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Consultant. When applicable, Consultant shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

3.3 Covenant against Discrimination. Consultant covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Consultant further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Nondiscrimination in City Contracts. Any business that enters into a contract for goods or services with the City of Irvine or any of its boards, agencies, or departments shall:

- (a) Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (b) Not discriminate in the performance of the contract on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (c) Incorporate the foregoing provisions in all subcontracts hereunder.

3.5 Independent Consultant. Consultant shall perform all services required herein as an independent consultant of City and shall remain at all times as to City a wholly independent consultant. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Consultant. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Consultant nor any of Consultant's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Consultant nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to

withhold State and Federal tax deductions from Consultant's compensation. Neither Consultant nor any of Consultant's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.6 Covenant against Contingent Fees. Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in 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.

3.7 Use of Patented Materials. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Consultant under this Agreement. Consultant shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

3.8 Proprietary Information. All proprietary information developed specifically for City by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Consultant's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Consultant's services under this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Consultant under this Agreement shall be made to City, and that Consultant shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

3.9 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Consultant's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Consultant's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Consultant, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Consultant's obligation to pay City any sums Consultant owes City.

3.10 Termination by City. City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Consultant. Upon receipt of any notice of termination from City, Consultant shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Consultant shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Consultant to fulfill its obligations under this

Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement consultant and similar expenses, exceeds the Budget.

3.11 Right to Stop Work; Termination by Consultant. Consultant shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Consultant shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Consultant shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Consultant shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Consultant terminates this Agreement because of an error, omission, or a fault of Consultant, or Consultant's willful misconduct, the terms of Section 3.10 relating to City's right to take over and finish the work and Consultant's liability shall apply.

3.12 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

3.13 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Consultant agrees to submit to the personal jurisdiction of such court.

3.14 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

3.15 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.16 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Consultant, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Consultant is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's

determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Consultant's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

3.17 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

3.18 Conflicts of Interest.

- A.** No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Consultant shall not employ, contract for, or receive consulting services from any such person, whether for compensation or not, while this Agreement is in effect.
- B.** Consultant represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant further agrees that while this Agreement is in effect, Consultant shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement.
- C.** Consultant acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Consultant to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Consultant agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Consultant further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

3.19 Consultant Ethics. Consultant represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Consultant shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Consultant as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Consultant shall not possess or maintain any business relationship with the applicant or any other person or entity which Consultant knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Consultant shall not advocate either for or against said project and/or application, and (iii) Consultant shall immediately notify City in the event Consultant determines that Consultant has or acquires any such business relationship with the applicant or other person or entity which has a personal stake

in said project and/or application. The provisions in this Section shall be applicable to all of Consultant's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

3.20 Compliance with California Unemployment Insurance Code Section 1088.8.

If Consultant is a Sole Proprietor, then prior to signing the Agreement, Consultant shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Consultant understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

3.21 CalPERS Annuitants. If Consultant is a California Public Employees' Retirement System ("CalPERS") annuitant, Consultant must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Consultant. If this Agreement remains in place, Consultant shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

3.22 Levine Act. California Government Code section 84308, commonly referred to as the Levine Act, precludes an Irvine City Councilmember from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Councilmember, or received by the officer on behalf of any other Councilmember, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires a Councilmember that has received such a contribution to disclose the contribution on the record of the proceeding. Review California Government Code section 84308 for more information.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively 'audit') that relate to or concern this Agreement at any time. Consultant agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Consultant's commercially reasonable hourly rate for services, Consultant agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Consultant shall prepare and submit to City any reports concerning Consultant's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written notice delivered to Consultant, to the books and records of Consultant related to Consultant's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Consultant in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of three (3) years. During said three (3) year period, Consultant shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To City: City of Irvine
 One Civic Center Plaza (92606) (Hand Deliveries)
 P. O. Box 19575
 Irvine, CA 92623-9575

Notices to Consultant shall be delivered to the address set forth below Consultant's signature on Part I of this Agreement, to the attention of Consultant's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows:

Part III
 Part II
 Part IV

Part V

Part I

PART III

SPECIAL PROVISIONS

1. **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.
2. **PART II, GENERAL PROVISIONS, Section 2.2 is modified as follows:**

2.2 Indemnification. Consultant shall, to the fullest extent permitted by law (including without limitation California Civil Code Sections 2782 et seq.), defend (with legal counsel reasonably acceptable to the City), indemnify and hold free and harmless the City and City Personnel (collectively, the "Indemnitees") from and against any and all claims, losses, costs, damages, injuries (including without limitation injury to or death of Consultant or Consultant's officers, agents, employees, representatives)(collectively, the "Consultant Entities"), expenses and liabilities of every kind, nature and description (including without limitation incidental damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, the negligence, recklessness or willful misconduct of Consultant, any of the Consultant Entities, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, "claims or liabilities").

- 2.2.1 Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such claims or liabilities are caused in part by the negligence, active negligence or willful misconduct of such Indemnitee.
- 2.2.2 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such claims or liabilities, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.
- 2.2.3 Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

PART IV

SCOPE OF SERVICES

Services shall be performed as set forth below and in accordance with ATTACHMENT I.

PART V

BUDGET

Pricing shall be as set forth below and in accordance with ATTACHMENT II.

Included in the total compensation are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein **shall not exceed \$2,499,989.17**, including all amounts payable to Contractor for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

No work shall be performed in connection with this Agreement until the receipt of a signed City of Irvine Purchase Order; and no work shall be performed with a value in excess of the Purchase Order amount as the City has not authorized nor is it obligated to pay Consultant any such excess amount.

In the event Consultant anticipates the potential need to perform services beyond those set forth herein where additional funding may be needed, Consultant shall notify City in writing allowing sufficient time for City to consider further action.

Payment for services will be made monthly on invoices deemed satisfactory to the City, with payment terms of net 30 days upon receipt of invoice. Consultant shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Consultant shall provide invoices with sufficient detail to ensure compliance with pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

The Purchase Order number must be included on all invoices, along with the City Representative's name. Failure to include this information on the invoice shall result in the return of the unpaid invoice.

Consultants should submit invoices electronically to: **isubmittal@cityofirvine.org**

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement. Any request for travel-related expense reimbursement must be pre-approved by the City. If approved, Consultant shall submit expense reimbursement requests to the City that include on their invoices detailed information including description, date of the expense, business purpose and amount. Travel related expenses (including hotels and meals) shall be reimbursed at direct cost, but **not to exceed the federal per diem rate** as established by the U.S. General Services Administration (www.gsa.gov/perdiem), plus applicable taxes. Consultant shall attach supporting documents substantiating all expenses such as itemized receipts, paid invoices or paid credit card statements (if description has sufficient detail).

ATTACHMENT I

SCOPE OF SERVICES

1 GENERAL

1.1 *PROPOSED PROJECT*

The Project consists of constructing new reinforced concrete pedestrian overcrossing, retaining walls and approaches, fencing and lighting, trail pavement, electrical systems, pavement delineation and signing, landscaping, repairs to Caltrans facilitates, Midwest guardrail system, and other items not mentioned here, but are required by the Plans and the Special Provisions. (See Section 1.4, [Exhibit “A” - Project Location](#), the project construction duration is 495 working days excluding plant establishment and 555 working days including plant establishment).

The City requests a proposal for **Construction Management, Inspection, Material Testing, and Design Support During Construction Services**. Tasks required include but are not limited to the items listed in Section 1.7 Construction Management, Inspection, Material Testing Services and 1.8 Design Support During Construction Services. The generally described improvements of the Project are:

- Reinforced concrete bridge footings with steel piling
- Reinforced concrete bridge abutments, and columns
- Complex reinforced concrete box girder bridge construction
- Aesthetic elements, details, and finishes
- Freeway, local street and parking lot improvements
- Retaining wall construction
- Drainage improvements
- Utility modifications
- Hardscape and landscape improvements
- Electrical/programmable bridge lighting improvements
- Signing/stripping improvements

1.2 *PROJECT BACKGROUND*

TY Lin International prepared Project plans and specifications. The Project area is in the City within permanent and temporary construction easements and contains various design standards and specifications which require specialized knowledge and expertise.

The Project consists of a complex reinforced concrete pedestrian overcrossing with various aesthetic details, elements, and finishes. The selected consultant must demonstrate expertise and experience in bridge construction, Caltrans coordination, federal grant funding requirements, reviewing, testing, and shop drawings, communications, programmable lighting, and electrical systems.

Final plans and special provisions are approved by affected agencies, and right-of-way acquisition / right-of-entry agreements complete. Additional Project schedule information is included in Exhibit "B" - Schedule of Services.

Various contract documents are available for your reference, including:

- Project plans
- Project Special Provisions
- Traffic Management Plan
- Fact Sheet – Exceptions to Mandatory Design Standards
- Caltrans Encroachment Permit
- Caltrans Cooperative Agreement
- Project environmental technical memos
- Project Environmental Commitments Record (ECR)
- Project Categorical Exemption/Categorical Exclusion Determination Form

Please provide a Dropbox link so the City can upload files to provide you access to these documents.

Designer of record:
Mr. Ryan Lau, PE
TY Lin International
20 Pacifica, Suite 350
Irvine, CA 92618

Project funding consists of System Development Charge (Non-circulation) fees and developer contributions.

1.3 ***PROJECT TEAM***

The Project team includes:

Alex E. Salazar, CIP Administrator, City of Irvine, Project Management Division
Darrell Hartman, Senior Civil Engineer, City of Irvine, Design Engineering Division
Anthony Caraveo, Senior Project Manager, City of Irvine, Project Management Division

1.4 **EXHIBIT "A" - PROJECT LOCATION**



1.5 **OBJECTIVES**

The consultant shall provide management services and administer the Project in accordance with the construction contract documents, which include the construction contract, any contract addenda, instructions to bidders, proposal requirements and conditions, Special Provisions, contract plans, standard plans, Standard Specifications for Public Works Construction (Greenbook), Caltrans standard plans and provisions, and reference specifications. The consultant will designate a Professional Civil Engineer registered in the State of California to serve as the construction manager. The work of this RFP is to be performed professionally and in keeping with the Schedule of Services under the overall supervision of the City's project manager in the City's office at its Operations Support Facility, 6427 Oak Canyon, Irvine, CA 92618.

The services of the construction manager will be required for the duration of the Project; estimated to take approximately twenty-eight months.

1.6 **PERSONNEL REQUIREMENTS**

All approved Project and construction management team members will be expected to perform work on the Project for its duration. Staff substitutions will not be allowed without prior City approval. The minimum qualifications for the position of construction manager are:

- Ten years of construction management experience on similar construction projects.
- Professional Civil Engineer licensed in the State of California.
- Experienced with structural bridges (Caltrans Structures Construction or similar).
- Experienced in Caltrans Construction Manual and falsework construction.
- Experienced in steel fabrication per Caltrans specifications and AWS D1.5.
- Familiar with the Caltrans Local Assistance Procedures Manual (LAPM), all requirements outlined in the LAPM for administering Federal-Aid construction contracts, and more specifically chapters 9, 15, 16, and 17 of the LAPM.
- Familiar with the Caltrans Local Agency Resident Engineer Construction Manual Supplement, Caltrans Construction Manual, Caltrans Local Assistance Structure Representative Guidelines, and Caltrans Bridge Construction Records and Procedures Manual, Volumes 1 and 2.
- Familiar with the Caltrans Survey Manual
- Proficiency in typical computer programs such as Outlook, Microsoft Word, Microsoft Excel, and Oracle/Primavera scheduling software

- Shop drawing review.
- Accessible to City staff at all times during normal City working hours.
- In-depth experience with federal and state contract administration records and reporting requirements
- Familiarity with typical design standards, specific City standards, and codes related to public improvement designs.
- Demonstrated ability to respond to and resolve disputes at the project level.
- Complete understanding of county, state, and federal water pollution control regulations related to runoff from and/or de-watering of construction sites.
- Thorough knowledge of critical path scheduling, including an ability to evaluate schedules submitted by contractors and to evaluate and anticipate downstream impacts to those schedules during construction.
- Demonstrated ability to respond to public concerns about, traffic handling, construction noise, access to businesses during construction, etc.
- Demonstrated ability to reach a common goal by working and communicating with a diverse group of stakeholders, including municipal and public agencies, private parties, private consultants, environmental groups, regulators, elected officials, and the public.
- Demonstrated ability to develop creative, cost-effective solutions.
- Demonstrated ability to manage and control construction projects so milestones are met and quality work products are produced on time and within budget.

The consultant shall provide competent inspection, materials/acceptance testing, and surveying staff. All staff will use City established policies and procedures. Staff must be experienced and licensed in their areas of expertise. Minimum qualifications are:

- Familiar with Caltrans and AWS D1.5 specifications.
- Experienced in falsework.
- Familiar with the Caltrans Local Assistance Procedures Manual (LAPM) testing requirements, and Caltrans materials/acceptance testing procedures.
- Demonstrable competency in applicable construction materials, methods, storm water compliance, codes, and standards.
- Experienced ensuring all work conforms to Project construction documents.
- Familiar with City standards, Caltrans standards, Orange County Flood Control District standards, Transportation Corridor Agency standards, Caltrans Construction Manual, City codes and ordinances, APWA "Greenbook" Standard Specifications for Public Works Construction,

California Manual on Uniform Traffic Control Devices (CA MUTCD), Work Area Traffic Control Handbook (WATCH), state and federal building codes, and site accessibility requirements.

- Experienced materials/acceptance testing staff trained and certified for tasks assigned.
- Experienced surveying staff, familiar with the Caltrans Survey Manual, trained and working under a surveyor licensed in the State of California.

1.7 ***SERVICES (Construction Management, Inspection, Material Testing)***

Consultant shall serve as an advisor and an advocate to aid in producing a product in keeping with the best interests of the City, and within the required Project schedule and budget. Consultant shall review all project reference documents (cooperative agreements, environmental documents, permits, contract documents, etc.). Proposed effort shall include all necessary services to satisfy City obligation required in these documents.

NOTE: Your firm is prohibited from proposing on any construction-related work on the Project that it is required to be managed under the scope of work in this RFP.

Services include:

1. PRE-CONSTRUCTION SERVICES

- a. Provide input and assistance to the City during the bid review and award process.
- b. Develop and process federal funding award forms and documents in accordance with the Caltrans Local Assistance Procedures Manual (LAPM).
- c. Develop a Construction Management Plan for the City's approval that includes procedures for team communication, review, reporting, weekly meetings, and approvals.
- d. Develop a Quality Management Plan (QMP) and Source Inspection Quality Management Plan (SIQMP) in accordance with Caltrans standards, and requirements. Process review and approval of QMP and SIQMP documents per Caltrans Cooperative agreement 12-820. The QMP will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (CIDH) pile or whenever else it is applicable.
- e. Facilitate a pre-construction meeting with personnel representing the City, the contractor, involved agencies, and utilities; at the meeting, discuss

general contract requirements, procedures, personnel, contract progress schedules, material issues, contractor issues, right-of-way details, coordination with utility companies, and other Project related issues.

- f. Establish a general Project protocol, set a construction start date, highlight and discuss critical Project special provisions, and distribute City forms and documents.
- g. Prepare minutes for this and all subsequent progress meetings and distribute them in a timely manner to all required parties.
- h. Prepare all construction notifications for distribution to stakeholders and the public and participate in neighborhood outreach and community meetings as requested by the City's project manager.
- i. Review contractor's schedule and advise the City project manager on the overall Project schedule including staging and completion dates, duration, milestones, and interfaces.

2. GENERAL CONSTRUCTION MANAGEMENT:

- a. Ensure videotape and photographic documentation of Project site prior to and during construction; periodically (at least weekly and as needed) videotape and digitally photograph Project progress that includes date of the events and conditions being documented. All non-compliance issues and adverse site conditions must be documented by videotape and photography.
- b. Provide regular, continuous Project construction management and direction to construction inspectors, material testers, surveyors, and any other necessary field personnel.
- c. Provide all documentation, inspections, and submittals necessary to ensure compliance with federal funding requirements.
- d. Review and recommend accepting or rejecting submittals, including but not limited to: traffic control plans, mix designs, welding plans, shop drawings, 3D CADD software submittals, and calculations for temporary structures such as trench shoring, falsework, and other temporary structural forms.
- e. Maintain continuous communication with field personnel, contractor, City staff, Project stakeholders, and neighbors.
- f. Prepare calculations, records, reports, and correspondence related to Project activities.
- g. Coordinate and monitor construction inspection activities to ensure compliance with contract documents.
- h. Coordinate and monitor materials/acceptance testing and recommend accepting or rejecting materials to ensure compliance with contract documents.

- i. Coordinate and monitor contractor's construction staking and survey quality assurance services; reject, document, and ensure re-staking of any construction staking out of compliance with construction documents.
- j. Ensure contractor complies with all local, state, and federal laws, ordinances, rules, regulations, regulatory/resource agency permits, and other orders as provided in the contract documents.
- k. Advise the City project manager promptly of all complaints and inquiries from property owners, citizens, officials, or others, and assist City staff in investigating and answering them; maintain a log showing the disposition of each complaint or inquiry.
- l. Review, respond to, and facilitate responses to Requests for Information (RFIs) from design engineer.
- m. Review change requests, facilitate design revisions, and develop, negotiate, and process CCOs. Facilitate Caltrans CCO review/approval and secure Caltrans concurrence on all Change Orders over \$50,000, in accordance with Caltrans Cooperative agreement 12-820.
- n. Monitor construction progress, review, and approve inspector measurements and bid item quantity calculations, develop and process monthly contractor payments.
- o. Provide and maintain logs for RFIs, CCOs, submittals, Requests for Quotations, Correction Notices, Stop Work Notices, and related construction documents.

3. INSPECTION SERVICES:

- a. Provide continuous construction inspection services, ensure compliance with contract documents, with local, state, and federal laws, ordinances, rules, regulations, and with regulatory/resource agency permits.
- b. Monitor and document materials testing and construction staking and survey quality assurance.
- c. Prepare daily inspection reports and document construction progress using videotaping and digital photography.
- d. Monitor and document construction progress, prepare weekly statements of working days (WSWD), and monthly Project critical path method (CPM) schedule updates.
- e. Monitor and document weather conditions and ensure best management practices (BMPs) are in place in accordance with the approved SWPPP. Ensure compliance with National Pollutant Discharge Elimination System (NPDES) permit.
- f. Monitor and document daily construction progress; measure, calculate, and track construction bid item quantities for monthly progress pay estimates.

- g. Ensure construction activities are performed in specified Project right-of-way.

4. MATERIALS/ACCEPTANCE TESTING SERVICES (ON-SITE):

- a. Provide materials/acceptance testing agreements with contract documents.
- b. Provide, maintain, calibrate, and certify all necessary tools and equipment required for materials/acceptance testing required by contract documents.
- c. Secure and retain testing personnel with licenses and certifications necessary to perform, document, and certify materials/acceptance tests required by contract documents.
- d. Develop and provide materials/acceptance documentation necessary for approvals.
- e. Familiarity with stainless steel; bolts, tubing, and fittings are specified in different material grades and are to be accepted on-site.
- f. Certified welding inspection for all on-site welding.

5. MATERIAL AND FABRICATION INSPECTION/TESTING (OFF-SITE):

- a. Provide material and fabrication testing agreements with contract documents.
- b. Provide, maintain, calibrate, and certify all necessary tools and equipment required for materials/acceptance testing required by contract documents.
- c. Secure and retain testing personnel with licenses and certifications necessary to perform, document, and certify materials/acceptance tests required by contract documents.
- d. Develop/provide materials/acceptance documentation necessary for approvals.
- e. Develop/provide materials/acceptance documentation necessary for approvals of all mockups.
- f. Inspect off-site fabrication and assembly of typical bridge elements: guided bearings, STU's, steel shop welding, and reinforcing welding.
- g. Inspect off-site fabrication of lighting standards.
- h. Include travel and lodging for off-site inspectors as necessary in the Project scope.

6. SURVEY/CONSTRUCTION STAKING SERVICES:

- a. Verify construction staking accords with contract documents.

- b. Provide, maintain, calibrate, and certify all necessary tools and equipment required for construction staking verification required by contract documents.
- c. Secure and retain licensed personnel certified to perform, document, and verify accuracy of construction staking required by contract documents.
- d. Develop/provide documentation necessary to document surveying quality assurance approvals.
- e. Verify a minimum of 10% of contractor's construction staking as required by surveying quality assurance services.
- f. Provide survey services necessary to support design engineers, facilitate design revisions, and develop CCOs.

7. UTILITY COORDINATION:

- a. Prepare a utility relocation matrix and update it monthly to identify utilities, track relocations start/end dates, durations, delays, and conflicts, and for comparison to the construction schedule.
- b. Coordinate with utility companies and utility contractors.
- c. Verify utility permits with agencies affected and facilitate utility installations.
- d. Ensure utilities perform their relocations in the timeframes and numbers of working days required by the contract documents.

8. QUALITY ASSURANCE:

- a. Oversee inspection and quality assurance of construction activities to ensure they conform to the plans and specifications.
- b. Oversee quality control/quality assurance testing and inspection programs.
- c. Assure the materials provided and the work performed accords with the contract documents by obtaining required material certifications before incorporating materials into the work.
- d. Verify that all manufacturers' tests required by the contract documents are performed before materials or equipment is incorporated into the work.
- e. Promptly report to contractor and City project manager, any work or materials which do not conform to the contract documents.
- f. Notify the contractor of any unacceptable work or material; recommend all actions necessary and adequate to achieve acceptable work and materials.
- g. Monitor contractor's work for deficiencies and recommend any special testing needed.

9. SAFETY:

- a. Maintain awareness of safety and health requirements, and of applicable regulations and contract provisions for the protection of the public and Project personnel.
- b. Review contractor's safety program; document and notify the City project manager and the contractor's safety officer of any observed deficiencies.
- c. Recommend appropriate remediation measures and ensure the contractor corrects unsafe conditions immediately.

10. CCOs:

- a. Identify the scope of work for potential CCOs and review and evaluate the appropriateness of all proposed CCOs.
- b. Prepare independent cost estimates for any changes resulting from design revisions or changes in field conditions.
- c. Advise City of CCOs effect on the contract schedule and budget.
- d. Assist in negotiating, drafting, and processing CCOs; recommend approval or denial.

11. CONSTRUCTION CLAIMS:

- a. Review and evaluate the merit of potential claims or requests for equitable adjustment the contractor submits.
- b. Document potential contractor claims and respond to contractor potential claim correspondence citing specific contract documents, codes, etc.
- c. Prepare an analysis of potential claims and make recommendations regarding their settlement.
- d. Negotiate with contractor and assist the City to facilitate claim resolution.

12. PROCESS PROJECT DOCUMENTATION:

- a. Maintain all Project documents, plans, specifications, correspondence, drawings, reports, testing, submittals, shop drawings, supplemental drawings, material deliveries, certifications, permits, CCOs, and all other Project related documents, in electronic and hard copy forms using the City's construction filing categories.
- b. Maintain a set of plans exclusively for noting "As-Built" conditions as the work progresses.
- c. Establish, implement, and maintain procedures, logs and/or matrixes for review and processing of all submittals and Project documentation including shop drawings, material, and equipment certifications.
- d. Cooperate with the City project manager and auditor during periodic on-site audits of construction management services provided by the construction manager; immediately correct any deficiencies noted.

- e. Prepare a letter for the City project manager documenting required responses and direction provided during administration of the Project.

13. INTERFACE WITH DESIGNER, CONTRACTOR, AND CITY CONSULTANTS:

- a. In accordance with the RFP, serve as an extension of City staff and as the City's representative working with the design engineer, contractor(s), and other City consultants.
- b. Facilitate design engineer's review of RFIs, shop drawings, and other submittals.
- c. Ensure design engineer and consultants respond within contract timeframes.
- d. Coordinate with design engineer and City consultants to ensure plan revisions for CCOs and redlines are developed, stamped, and signed by a registered civil engineer.

14. DAILY AND WEEKLY REPORTS:

- a. Prepare and maintain the Inspector's Daily Reports that includes daily logs recording weather, contractors and number of workers on-site, work progress on-site, any problems encountered and solutions agreed upon.
- b. Distribute weekly construction progress reports to the City and prepare the Weekly Statement of Working Days.

15. CPM SCHEDULE:

- a. Coordinate, review, and recommend for acceptance the contractor's proposed baseline CPM schedule for Project completion.
- b. Review promptly contractor's monthly schedule update and revision submittals for conformance to master schedule and contract documents.
- c. Review and advise the City project manager on the overall Project schedule including staging and completion dates, duration, milestones, and interfaces.
- d. Notify the City project manager immediately if the proposed work schedule does not conform to the contract documents.
- e. Recommend to City project manager possible solutions to scheduling problems to ensure the Project is completed on time, within budget, and in accordance with the contract drawings and specifications.
- f. Prepare any necessary Time Impact Analyses to verify contractor requests for additional contract time.

16. FACILITATE MEETINGS:

- a. Conduct weekly construction progress meetings to discuss procedures, progress, problems, and scheduling.
- b. Prepare minutes of all meetings and distribute to required parties within three working days.
- c. Conduct additional meetings necessary to facilitate construction.

17. ENVIRONMENTAL COMPLIANCE / MITIGATION:

- a. Monitor, evaluate, report, and ensure compliance with all laws, rules, and regulations concerning technical memos and environmental documents.
- b. Ensure contractor implements the Project's SWPPP and/or BMPs accord with the contract documents.
- c. Monitor NPDES compliance; document and take appropriate action to correct SWPPP and/or BMP deficiencies.
- d. Prepare Stormwater Multiple Application and Report Tracking System (SMARTS) reports; update and upload them into the online database.

18. RIGHT-OF-WAY COMPLIANCE:

- a. Ensure construction activities stay within specified Project right-of-way, including City and, public agency rights-of-way, utility easements, permanent easements, and temporary construction easements, and ensure compliance with all terms and conditions associated with right-of-way documents.

19. MONTHLY PROGRESS ESTIMATES AND INVOICES:

- a. Review and verify the accuracy (amount due, completed work, bid prices, compliance with contract pay clauses, certified payroll, etc.) of contractor's monthly payment requests and make recommendations for payment.

20. LABOR COMPLIANCE:

- a. Monitor contractor's labor compliance with prevailing wage rates and affirmative action requirements applicable to the Project including applicable labor compliance programs.
- b. Collect and review for compliance weekly certified payroll documents including, but not limited to, fringe benefit statements, apprentice documents, special payroll deductions, and other required supporting documents.

- c. Follow up on delinquent submittals and recommend special actions if contractor is not in compliance.

21. CONSTRUCTION COMPLETION AND CLOSEOUT:

- a. Review Project for completion and confirm to City project manager in writing that work is ready for final inspection.
- b. Coordinate final testing, documentation, and inspections as needed.
- c. Prepare Project punch-list with City departments, involved design engineer, and other consultants.
- d. Issue correction notices for deficiencies found, and monitor and enforce all corrective action as necessary.
- e. Coordinate collecting all documents needed for Project closure including guarantees, warranties, O&M manuals, affidavits, released bonds and waivers, etc. to the City project manager.

22. AS-BUILTS:

- a. Obtain from contractor all record (As-Built) drawings per Caltrans standards, contract required documents, lien releases, and written warranties.
- b. Review and process detailed red line As-Built construction drawings to ensure they show all changes or additions to the original contract documents and submit all final documents to the City project manager for acceptance within thirty days of the final inspection.

23. PROJECT ACCEPTANCE:

- a. Coordinate Project acceptance, monitor the contractor, subcontractor, and design engineer's progress in finalizing all project records, prepare the final Project summary report to the City, and prepare all official Project files in the City's specified format for permanent retention.
- b. Facilitate and secure Project acceptance from all departments and agencies involved.
- c. Prepare and file a Notice of Completion with county clerk recorder's office.
- d. Advise City project manager on liquidated damages and final payment.

24. Drone

- a. Fly drone to take pictures and videos of construction site once a month for the estimated duration of 24 months and / or when requested by the City

1.8 Services (Design Support During Construction)

- a. Bid Support

- Provide bid support to answer bidder's inquiries and / or revise plans and specifications as necessary for addenda to be issued to contractor before bid opening

b. Submittals

- Review Permanent Structure Submittals and shop Drawings as requested by the City and per defined responsibilities between Designer and Structure Representative in Caltrans Manuals, Procedures and Practices. For example, designer has reviewing responsibilities for Post-Tensioning submittal
- Structure Representative will mainly review temporary structure submittals. City may request cursory review by the Designer as needed.
- Review Electrical and Landscape Submittals
- Review non-structural submittals as requested by the City

c. Request for Information (RFI)

- Review and Respond to RFIs as requested by the City. RE/SR will mainly review & respond to RFIs. Those RFIs that may lead to any change in plans or specifications will be forwarded to designer for review & response.

d. Meetings

- Attend in person, online or phone meetings as requested by the City on as needed per issue basis

e. As-Built Drawings

- Prepare As-Build CAD drawings per contractor prepared and RE verified marked up drawings. Reflect all Change Orders and / or RFIs that change plans or Specifications. Prepare Structure As-Built Plans per Caltrans manuals, procedures and practices

1.9 ***LIMITATION OF AUTHORITY***

Consultant shall not authorize:

- Deviations from the contract documents
- CCOs and field orders

2 SCHEDULE FOR PERFORMANCE OF SERVICES

2.1 *PROJECT SCHEDULE*

Time is of the essence in completing this Project, which is an essential element of the City's broader, near-term development objectives. Please refer to the summary schedule ([Exhibit "B – Schedule of Services"](#)) for major milestone dates. [The schedule may be revised as necessary to meet the needs of the City.](#)

2.2 *TIME EXTENSIONS*

Anticipate routing Project delays in your fee and schedule. Time extensions will only be authorized in writing as a CCO due to major changes in Scope of Services, unavailability of essential information, construction delays by CCO, City-caused delays, or delays by others.

2.3 *ALTERNATIVE WORK SCHEDULE*

Discuss the Project schedule and your firm's ability to meet or exceed the milestones given. If it is determined that there are **major** deficiencies in the City-provided work schedule or that the work can be accomplished in less time, an alternative work schedule may be submitted along with an appropriate explanation in the Addendum Section of the proposal. The City is under no obligation to consider an alternative schedule.

2.4 **EXHIBIT "B" – SCHEDULE OF SERVICES**

Not all product or milestone delivery dates are shown. Consultant shall complete all required work by the City approval date. Some environmental investigation/monitoring tasks may need to be performed after PS&E approval but prior to the start of or during construction.

Construction Schedule - Tentative

City Advertises Project (4 Weeks).....	August, 2023
Bid Opening	September, 2023
Contract Award/Execution... ..	November, 2023
Pre-Construction Meeting.....	January, 2024
Notice to Proceed.....	January, 2024
Construction Complete.....	April, 2026
Complete Project Closeout.....	November, 2026

ATTACHMENT II

September 6, 2023

City of Irvine / Public Works
Mr. Anthony Caraveo
Senior Project Manager
Irvine, CA 92623-9575

Reference: Response to Request for Proposals for Construction Management, Inspection, Material Testing and Design Support During Construction Services for Jeffrey Open Space Trail (JOST)/I-5 Bicycle and Pedestrian Bridge CIP 341502

Subject: TYLin CM + DSDC Service Fee Proposal (Rev. 4)

Mr. Caraveo,

Please find attached TYLin's revised fee proposal for;

Construction Management, Inspection and Material Testing Services (CM)	\$2,099,364.20
Design Support During Construction Services (DSDC)	<u>\$ 400,624.97</u>
Total	\$2,499,989.17

Please note that this cost proposal is based on 495 Working days construction duration.

If you have any questions, please feel free to contact me at (858) 245-8112 or at Joseph.Smith@tylin.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joseph Smith'.

Joseph Smith, PE, CCM
Vice President
Project Manager
TYLin

City of Irvine - JOST Project / TYLin CM Service Fees (2024-2025) - Based on 495 Working Days Construction

TASK	Principal In Charge	Construction Manager / Technical Support (RE/SR/OE/Inspector)	TYLI Inspector	Construction Manager / Technical Support	Consultant Inspector	Material Testing On-Site	Material Testing Off-Site	QA Survey	Labor Compliacne
	Joe Smith	Nader Naderi	TBD	J. Buckley / W. Durant	TBD	RMA	ZTC	Guida	DESI
Rate (\$/HR)	\$295.00	\$250.00	\$205.00	\$250.00	\$205.00	\$185,000.00	\$165,000.00	\$50,000.00	\$200.00
Pre-Construction Services		75							
Construction Management (RE/SR/OE/Inspection)		3605		145					
Inspction		89	2339		72				
Material Testing (On-Site)						1			
Material Testing (Off-Site)							1		
QA Surveying								1	
Labor Compliance									225
TYLI Accounting									
Post-Construction		124							
Subtotal	\$0.00	\$973,250.00	\$479,495.00	\$36,250.00	\$14,760.00	\$168,181.82	\$150,000.00	\$45,667.00	\$40,909.09
10% Contingency		\$97,325.00	\$47,949.50	\$3,625.00	\$1,476.00	\$16,818.18	\$15,000.00	\$4,566.70	\$4,090.91
Total		\$1,070,575.00	\$527,444.50	\$39,875.00	\$16,236.00	\$185,000.00	\$165,000.00	\$50,233.70	\$45,000.00
Grand Total	\$2,099,364.20								
Percentage of Grand Total \$	0.00%	51.00%	25.12%	1.90%	0.77%	8.81%	7.86%	2.39%	2.14%
Percentage of (495x8=)3,960 hrs.	0.00%	98.31%	59.07%	3.66%	1.82%				
CM % of \$17M Construction Cost									
12.35%									

City of Irvine - JOST Project / TYLin DSDC Service Fees (2023-2025)

Description	Scope Item	Fee Line 26	Hours	Average Rate	Total Fee
Bid Support	1.8a	a	77	\$219.29	\$16,885.33
Submittals (Permanent Structure)	1.8b(i)	b	127	\$244.83	\$31,093.41
Submittals (Temporary Structure)	1.8b(ii)	c	21	\$246.15	\$5,169.15
Submittals (Electrical)	1.8b(iii)	d	43	\$230.96	\$9,931.28
Submittals (Landscape)	1.8b(iii)	e	12	\$155.00	\$1,860.00
Submittals (Non-Structure)	1.8b(iiii)	f	199	\$252.69	\$50,285.31
RFIs + Bridge Lighting	1.8c	g	797	\$233.59	\$186,171.23
Meetings	1.8d	h	156	\$252.87	\$39,447.72
As-Builts	1.8e	i	273	\$218.98	\$59,781.54
Total			1705	\$234.97	\$400,624.97