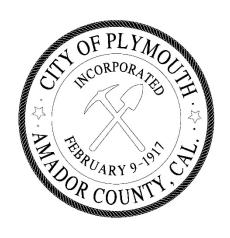
### **City of Plymouth**

Issued: November 18, 2022



#### Request for Proposal (RFP)

#### **FOR**

# DESIGN ENGINEERING SERVICES FOR REPAIR OF THE FEBRUARY 2017 STORM DAMAGE TO THE ARROYO DITCH PLYMOUTH, CALIFORNIA

FEMA-4308-DR-CA

City of Plymouth 9426 Main Street P.O. Box 429 Plymouth, CA 95669 (209) 245-6941

SUBMITTAL DEADLINE JANUARY 12, 2023 – 3:00 P.M.



# City of Plymouth CALIFORNIA

#### REQUEST FOR PROPOSALS

DESIGN ENGINEERING SERVICES FOR REPAIR OF THE FEBRUARY 2017 STORM DAMAGE TO THE ARROYO DITCH, PLYMOUTH, CALIFORNIA FEMA-4308-DR-CA

The Arroyo Ditch was damaged during a February 2017 storm event. The City of Plymouth is soliciting professional engineering services to design repairs of the ditch, and ultimately, provide engineering assistance throughout construction of the proposed improvements.

Please submit four (4) hard copies and one (1) PDF (on thumb drive and word searchable) version of the proposal no later than 3:00 p.m., Thursday, January 12, 2023. Proposals received after this date and time will be considered non-responsive. Proposals should be addressed to:

Margaret S. Roberts, City Manager
City of Plymouth
P.O. Box 429
Plymouth, CA 95669

All questions related to this RFP shall be directed, via email, to:

Margaret S. Roberts; City Manager at MRoberts@cityofplymouth.org

#### **Project Background**

The Arroyo Ditch is a 17-mile water conveyance system built in 1851. It is an earthen unlined open ditch with short sections of a concrete flume, shotcrete bank, corrugated metal pipe (CMP) and high-density polyethylene pipes (HDPE). The Arroyo Ditch is located near the Middle and South Forks of the Consumnes River canyons. The ditch lies predominantly on north facing, tree covered slopes. The City of Plymouth owns the Arroyo Ditch and has rights to the water it conveys.

During a February 2017 storm event, strong winds and heavy rainfall caused soil erosion

and damage. The damages caused by the 2017 storm event are geological in nature.

FEMA approved the repair of 46 locations of storm damage which are shown on the 2017 Storm Damage APE for the Arroyo Ditch, Exhibit A to this RFP. These damages are found in the first 16 miles of the ditch.

Funding in the amount of \$1,037,362.96 was provided by a California Disaster Assistance Act (CDAA) grant. It is anticipated that additional funding will need to be acquired and an application will need to be prepared and processed through CalOES for the additional funding needed for environmental and engineering design services for this project.

To advance this project to construction, environmental studies and documentation are necessary to facilitate adoption of NEPA and CEQA documents and engineered design is necessary to facilitate competitive bids. FEMA will serve as the NEPA lead agency and the City of Plymouth will serve as the CEQA lead agency.

The engineered design will describe the proposed repairs using plans and details which will also be used for procurement of competitive contractor bids.

#### **Proposal Schedule**

The following are goals for the process:

RFP Release: 11/18/2022
 Questions Due: 12/14/2022
 Response Issued: 12/21/2022

Proposals Due Date and Time: <u>01/12/2023</u> by <u>3:00</u> p.m.

Consultant Interviews: 01/19/2023
 Anticipated Contract Award 01/26/2023

#### Part A - Proposal Format

This part of the RFP describes the format and content of each section of the proposal.

Section 1: Introductory Letter – The proposer may use this section to introduce the proposal and/or to summarize the key provisions of the proposal. The introductory letter shall include, but need not be limited to, the following information: The name of the firm, as well as, the signature, printed name and title, telephone, and email of the officer authorized to represent the firm in any correspondence, negotiations and sign any contract that may result. The address and office that will be providing the service, a project manager's name, telephone, and email address. The federal tax ID numbers, and state of incorporation, if applicable, must also be included. A statement shall be included that "the firm accepts all the terms and conditions contained in the Request for Proposal and the proposal is valid for one hundred and twenty (120) days after submission deadline". A statement shall be included that "the firm accepts all the terms and conditions contained in the sample City of Plymouth Professional Services Agreement provided with the RFP" (maximum of 2 pages) or list any requested modifications.

**Section 2: Approach** – Provide a detailed description of the project and technical approach for completing the scope of work (Part B), and any suggested revisions. Include a list of any unique ideas, innovative approaches and key issues relating to the project. Include any issues that your firm believes will require special consideration. The City will assess the Consultant's understanding of all aspects of the project based on the proposed approach (no page limit).

**Section 3: Project Organization** – List contact information for the lead firm and all sub-consultants (if any) to be engaged for the project; organization chart; brief description of responsibilities and qualifications for key personnel that emphasize experience directly relevant to the project. Key personnel include the project manager and project engineer. Qualifications of the principal in charge will not be considered (maximum of 6 pages).

**Section 4: Schedule** – Provide a work schedule for the tasks described in the scope of work (Part B); prepare a timeline showing precedent tasks, including all deliverables and City review time. Consultant shall assume a minimum of one (1) week for all City review periods (no page limit).

**Section 5: Personnel Effort** – Provide an estimate of the required personnel hours by task and job title, as required to execute the scope of work. Include a breakdown of hours for each task and each employee and subconsultant who will work on the project. A time-task matrix would be beneficial. In addition, provide a detailed fee estimate, including hourly rates for each person assigned to the project and time estimate for each and estimate of billable expenses, **in a separate sealed envelope**. Group the effort and expenses into basic services, and additional-optional services.

Estimated personnel effort and expenses for construction-phase services will be negotiated separately, after the final contract documents are complete.

The services described in the scope of work shall be compensated on a time-andexpense basis with separate not-to-exceed budgets for basic and additionaloptional services.

Monthly invoices shall be in sufficient detail to track individual labor and expenses and includes a detailed description of the work performed by each individual for each task (no page limit).

**Section 6: Experience and References** – Provide brief descriptions of up to four projects completed over the last ten years, performed by the individuals listed in Section 2. Projects must be similar in scope to the City's project. Consultant experience that does not include the individuals listed in Section 2 will not be considered. Provide references for each of the listed projects (maximum of 1 page per project).

**Section 7: Resumes** – Provide a resume for all key personnel listed in Section 2. Resumes should not exceed 2 pages per individual.

**Section 8: Insurance** – Provide a summary of the firm's (and sub-consultant's) insurance coverage in accordance with the Professional Services Agreement.

#### Part B - Scope of Work

Provide a detailed description of the Consultant's proposed scope of work. List the basic services to be performed by the Consultant and assumptions regarding what will be provided by the City. The Consultant is expected to supplement these task descriptions as they deem necessary to complete each phase of the project. For purposes of this proposal, the City's repair project consists of the following improvements shown on the APE Map in Exhibit A.

Additional tasks or modifications to the task list that the consultant feels will produce a more cost effective or timely project should be included in the proposal.

All deliverables are expected to include three (3) bound hard copies, and electronic PDF copies of each document included with the deliverable. All drawings shall be submitted in half-size (11" x 17") and full-size (24" x 36), unbound copy of the drawings, and one unbound, single-sided, copy of the specifications shall be submitted with the final contract documents. Specifications shall be in accordance with <u>Caltrans Standard Specifications 2022</u> and AutoCAD files for all drawings shall be included with each submittal.

Engineer's estimates of probable construction costs shall incorporate gradually decreasing contingency factors at each progress submittal.

Below is an outline of the scope of services anticipated for this project which is not an exhaustive list. The proposer should provide a thorough understanding of the work required to advance this project to construction.

#### Task 1: Project Management and Coordination

- Project staffing
- Project administration and management.
- Administrative planning.
- QA/QC process.
- Progress reporting.
- Monthly invoicing.
  - All invoices shall include a one-page status report that identifies work accomplished during the invoiced period, and work planned for the upcoming invoice period.
- Bi-weekly conference calls.

- Provide advice on federal and state laws, regulations, and guidelines.
- Assist with communication with regulatory agencies.

#### Task 2: CalOES/FEMA

- Coordinate with and participate in regular conference calls with CalOES/FEMA.
- Prepare requests for additional funding, as necessary.

#### Task 3: Right of Way

Assist with procuring necessary rights to design and construct the project.

#### Task 4: Environmental

- Prepare environmental studies, anticipated to include the following:
  - Biological Resource Assessment Report
  - o Aquatic Resources Delineation Report
  - Cultural Resources Inventory and Evaluation
- Environmental Document
  - CEQA Document
  - NEPA Document
- Identify and procure necessary environmental permits

#### Task 5: Public Outreach

Participate in City Council meetings as necessary to present project, take public comment and provide updates and answers to questions. Three meeting are anticipated.

#### Task 6: Engineering

Prepare construction documents to facilitate storm damage repairs to the ditch. Assist the city with public procurement of bids.

#### 35% Submittal

Prepare the following for 35% submittal:

 Civil plans sheets showing the location of the Arroyo Ditch, approximate property boundaries, locations of improvements, project details and access locations.

Preliminary Engineer's estimate of probable construction costs.

#### 65% Submittal

Prepare the following for 65% submittal:

- Incorporate City Engineer's 35% plan review comments.
- 65% Plans.
- 65% Engineer's estimate of probable construction costs.
- 65% Bid item descriptions.

#### 90% Submittal

All project drawings and specifications at the 90% design level shall have been prepared and reviewed for quality and completeness and be ready for Engineer's seal.

- Incorporate City Engineer's 65% plan review comments.
- 90% Plans.
- Technical Specifications.
- 90% Engineer's estimate of probable construction costs.
- Update City-provided Front End contract documents with project specific information.

#### **Final Bid Documents**

- Incorporate City Engineer's 90% plan review comments.
- Stamped and signed final Plans, Specifications, and Estimate for bidding.

#### **Task 7: Bid Phase Assistance**

Provide the City with engineering assistance during the bid period. Expected services include the following:

- Provide written responses to Bidders' requests for information.
- Facilitate pre-bid meeting and job walk.

- Preparation of up to three (3) addenda.
- Assist City with review of Contractor's bids.
- Preparation of conformed contract documents.

City staff will be responsible for all bid advertisement activities, including issuance of addenda and reproduction and distribution of bid documents.

#### **Task 8: Construction Phase Assistance (Optional)**

The following effort describes the Consultant's additional optional services that will be provided during construction:

- Construction management for the duration of the construction contract
- Inspections, materials testing, and construction observation.
- Submittal reviews.
- Assist City with negotiating and preparation of contract change orders.
- Preparation of work-order directives.
- Administration of construction progress meetings.
- Review and approve Consultant's progress payment requests and certified payroll documents.
- Responses to Consultant's Requests for Information (RFIs).
- Preparation of record drawings that incorporate Consultant's as-built data and information.

Consultant shall describe their approach for providing these additional optional services. The level of effort and fee budget for this task will be negotiated separately after final contract documents are accepted by the City.

#### Part C - Selection Criteria

A technical review panel composed of City staff and/or others will evaluate and rate each proposal based on the following items:

- Approach and Project Organization (50 points)
- Schedule (10 points)
- Personnel Effort for basic engineering services (15 points)
- Consultant Experience and References (40 points)
- Location of project office and project manager within 300 miles of project site (5 points)
- Interview/Oral Presentation (20 points)

Estimates for additional optional services will be used as a basis for negotiating a fee budget with the selected consultant, if the City elects to obtain these services. These estimates will not be used as a basis for Consultant selection. However, a final recommendation will be made by the selection panel upon completing a review of all responsive proposals. Cost is a factor in a firm's selection, but will not be used until each member of the review committee has completed their rating. The General Manager will negotiate the final scope and cost of services with the selected Consultant. If the City and selected Consultant are unable to agree on final terms and conditions, the City reserves the right to select the next highest rated Consultant.

The City expects to hold interviews with a short list of Consultants prior to final selection. City will attempt to negotiate with the recommended consultant team. However, the City reserves the right to waive all proposals. Consultant selection, scope and cost will be presented to the City Council for final approval.

Part D. Professional	Sarvica Agraement	
Part D – Professional	Service Agreement	

# PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF PLYMOUTH AND XXXXXXXXX

THIS AGREEMENT for professional services is made by and between the City of Plymouth, a California municipal corporation ("City"), and XXXXX a XXXXXX Corporation ("Professional") as of XXXXXXXX, 2023.

**Section 1.** Services. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 <u>Term of Services.</u> The term of this Agreement shall begin on the date first noted above and shall end on XXXXXX, 2023. Professional shall complete the work described in <u>Exhibit A</u> prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 <u>Standard of Performance.</u> Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.
- **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- **1.4 Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.
- **Section 2. COMPENSATION.** City hereby agrees to pay Professional a sum not to exceed XXXXX (\$XXXX), notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable

costs incurred under this Agreement. In the event of a conflict between this Agreement and Professional's proposal, attached as <a href="Exhibit B">Exhibit B</a>, regarding the amount of compensation, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Professional shall not bill City for duplicate services performed by more than one person.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- **2.1** <u>Invoices.</u> Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
  - Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
  - The beginning and ending dates of the billing period;
  - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
  - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
  - The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder, as well as a separate notice when the total number of hours of work by Professional and any individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in <u>Exhibit A</u>;
  - The Professional's signature.
- **2.2** Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized

reimbursable costs incurred. City shall have 60 days from the receipt of an invoice that complies with all of the requirements above to pay Professional. The Parties understand that City is receiving reimbursements from Amador County for this Agreement and therefore payment may be delayed.

- **Example 2.3** Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (90) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 <u>Total Payment.</u> City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- **2.5** Hourly Fees. Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B. Any adjustment in the hourly rate shall not exceed five percent (5%) and shall not be implemented until the City has received written notification.
- 2.6 Reimbursable Expenses. Reimbursable expenses, if any, are set forth in Exhibit B, and shall not exceed (\$XXX). Reimbursable expenses not listed in Exhibit B are not chargeable to the City. Reimbursable expenses shall be approved by the City Manager prior to being incurred. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- **2.7** Payment of Taxes. Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 <u>Payment upon Termination.</u> In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

- **2.9** <u>Authorization to Perform Services.</u> The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- **Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

- **INSURANCE REQUIREMENTS.** Before beginning any work under this Section 4. Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.
  - Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional as required by the California Labor Code. The Statutory Workers' Compensation Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident and Employer's Liability Insurance with limits of ONE MILLION DOLLARS (\$1,000,000.00) per accident, disease per employee and disease per policy. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self- insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-

insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

See Section 4.4.5 below for waiver of subrogation requirements.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Professional does not have any employees.

#### 4.2 Commercial General and Automobile Liability Insurance.

- **4.2.1 General requirements.** Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence. combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 <u>Minimum scope of coverage.</u> Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 00 01 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001

(most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

- **4.2.3** Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
  - City and its officers, employees, agents, and volunteers shall a. be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers. The coverage under this section must apply on a primary and non-contributory basis with respect to any insurance or selfinsurance program maintained by the City. The project name, agreement number and address of the City of Plymouth must be shown on the Certificate of Insurance, the Additional Insurance Endorsement(s) and Notice of Cancellation, i.e., City of Plymouth, 9426 Main Street, PO Box 429, Plymouth, CA 95669. Contractor agrees and stipulates that any insurance coverage provided to the City of Plymouth shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Government Claims Act (California Government Code Section 810 et seq.).
  - b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
  - c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
  - d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
  - e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by

- certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.
- f. If Professional or subcontractors maintain higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits.
- g. The policy must cover inter-insured suits and include a "separation of insureds" or severability clause which treats each insured separately.
- h. The policy shall not contain a Contractors' Warranty or other similar language which eliminates or restricts insurance because of a subcontractor's failure to carry specific insurance or to supply evidence of such insurance.
- **Professional Liability Insurance.** Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.
  - **4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
  - **4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
  - **4.3.3** The following provisions shall apply if the professional liability coverages are written on a claims-made form:
    - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
    - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended

reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.

c. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### 4.4 All Policies Requirements.

- **4.4.1** Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 <u>Verification of coverage.</u> Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- **4.4.3** <u>Subcontractors.</u> Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- **4.4.4** <u>Deductibles and Self-Insured Retentions.</u> Professional shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

- 4.4.5 <u>Waiver of Subrogation</u>. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.
- **4.4.6** Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to City at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.
- **4.4.7** Continuation of Coverage. Coverage shall be continued for at least two (2) years after completion of the work under this Agreement.
- **Remedies.** In addition to any other remedies City may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Professional's breach:
  - Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or
  - Terminate this Agreement.

#### Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

**5.1 General Requirement.** Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers,

employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 5.2 PERS Indemnification. In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 5.3 <u>Design Professionals.</u> Notwithstanding Sections 5.1 and 5.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

#### Section 6. STATUS OF PROFESSIONAL.

6.1 <u>Independent Contractor.</u> At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in

this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee to become eligible for a claim for PERS benefits.

**Professional Not an Agent.** Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

#### Section 7. LEGAL REQUIREMENTS.

- **7.1** Governing Law. The laws of the State of California shall govern this Agreement.
- 7.2 <u>Compliance with Applicable Laws.</u> Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- **7.3 Other Governmental Regulations.** To the extent that this Agreement

may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 7.4 <u>Licenses and Permits.</u> Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.
- 7.5 <u>Nondiscrimination and Equal Opportunity.</u> Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby. Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

#### Section 8. TERMINATION AND MODIFICATION.

**8.1** <u>Termination.</u> City may cancel this Agreement at any time and without cause upon written notification to Professional.

Professional may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided

- to Professional or prepared by or for Professional or the City in connection with this Agreement.
- 8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.
- **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting. City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- **8.5** Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.
- **8.6** Options upon Breach by Professional. If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
  - **8.6.1** Immediately terminate the Agreement;
  - **8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;
  - **8.6.3** Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or

**8.6.4** Charge Professional the difference between the cost to complete the work described in <a href="Exhibit A">Exhibit A</a> that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 2 if Professional had completed the work.

#### Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Professional's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 Professional's Books and Records. Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.
- 9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

#### Section 10 MISCELLANEOUS PROVISIONS.

**10.1** Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to

- reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 <u>Venue.</u> In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Amador or in the United States District Court for the Eastern District of California.
- **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. 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.
- **10.4 No Implied Waiver of Breach**. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- **10.5** Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- **10.6** <u>Use of Recycled Products.</u> Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- **10.7** Conflict of Interest. Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* 

Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 et.seq., the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this

Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- **10.8** <u>Solicitation.</u> Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- **10.9** Contract Administration. This Agreement shall be administered by City Manager Jeff Gardner ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10	Notices.	Any written notice to Professional shall be sent to:
	XXX	
	XXX	
	XXX	

Any written notice to City shall be sent to:

City of Plymouth

Attn: City Manager Margaret Roberts

P.O. Box 429

Plymouth, CA 95669

10.11 <u>Professional Seal.</u> Where applicable in the determination of the contract administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

Seal and Signature of Registered Professional with report/design responsibility.

**10.12** <u>Integration.</u> This Agreement, including the scope of work and compensation amount attached hereto and incorporated herein as <u>Exhibits A and B</u>, and represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations,

representations, or agreements, either written or oral.

**10.13 IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

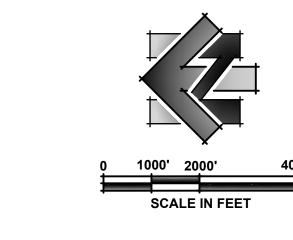
CITY OF PLYMOUTH	PROFESSIONAL	
Margaret Roberts, City Manager	XXXXX	
Date:	Date:	
Attest:		
Maria De La Torre, City Clerk		
Date:		
Approved as to Form:		
Frank Splendorio, City Attorney		
Date:		

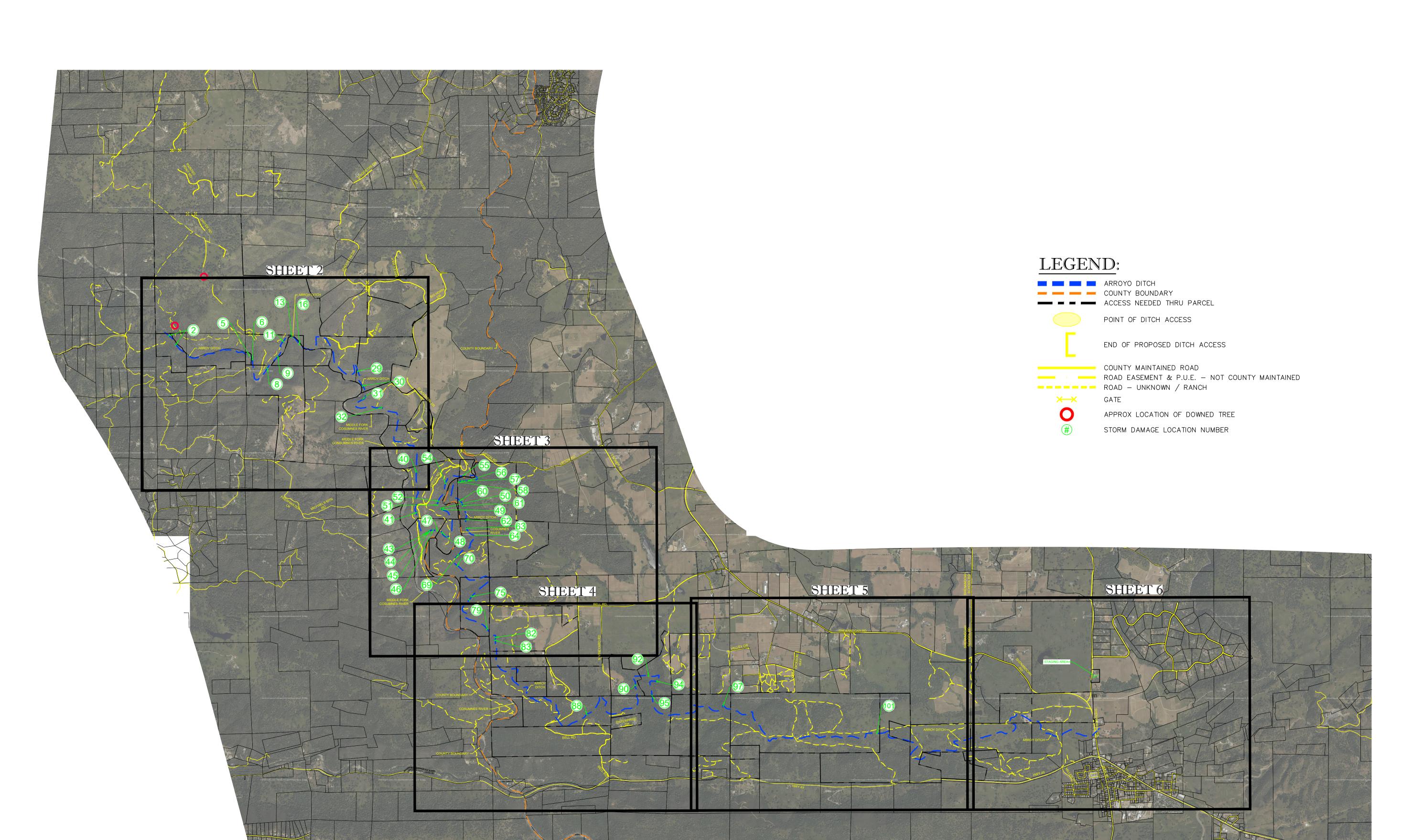
Last Revised November 2022

# EXHIBIT A to Professional Services Agreement with XXX Scope of Services

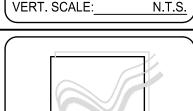
## EXHIBIT B to Professional Services Agreement with XXX Compensation Schedule

#### Exhibit A – APE Map





HOR. SCALE: AS NOTED VERT. SCALE: N.T.S



DRAWING SCALE

2017 STORM DAMAGE APE ARROYO DITCH

DRAWING INFO DATE:\_\_\_\_\_ DRAFTER:\_\_ DESIGNER:\_\_ REVIEWER:\_\_

PROJECT NO. **6930.002** SHEET NO. C1 OF C6

