Agreement for Services

By means of this agreement between the City of Delano, a municipal corporation ("City") 1015 Eleventh Avenue, Delano, CA 93215 and Mendoza & Associates a California corporation, ("Consultant") made this 23 day of April, 2012.

Recitals

WHEREAS, Consultant represents that Consultant is experienced and well qualified in the field of Construction Management and Resident Engineer; and

WHEREAS, the City desires to contract with Consultants, to have Consultants perform Construction Management and Resident Engineer services for the State Route 99 and Woollomes Avenue Interchange Widening Project;

NOW THEREFORE, incorporating the foregoing Recitals herein, the City and Consultant mutually agree as follows:

1. Scope of Work: The services furnished under this Agreement will be on a Task Order basis, with each Task Order identifying a specific work scope, fee and schedule. City and Consultant shall mutually agree in writing upon the contents of each Task Order prior to Consultant beginning work. Tasks are described in "Proposal for Construction Management and Resident Engineer Services for Delano's State Route 99 and Woollomes Avenue Interchange Widening Project."

2. Time and Order of Work: The format of the work approach and work plan shall be as mutually agreed upon by Consultant and the City in each Task Order. Consultant shall complete all work and service assigned in a timely and professional work like manner as described in Exhibit A (RFP).

3. Compensation: The cost for services for each Task Order is in Appendix B of Exhibit A.

4. Payment Procedure:

   (A) Consultant shall be paid for work and services rendered after receipt of an itemized invoice for the work complete and approved by the City. Invoices shall be detailed and supported with documentation.

   (B) Payments shall be made by the City within thirty (30) days after receipt and approval of the Consultant's itemized invoice by the City unless the work or services being billed for are unacceptable to the City.

5. City's Responsibilities: The City shall designate a representative authorized to act on its behalf with respect to orderly execution of this Agreement. The City, or its representatives, shall promptly render decisions pertaining to the progress of the work to avoid unreasonable delay in the progress of the work services to be provided herein by the Consultant.

6. Insurance:

(A) Consultant shall procure and maintain for the duration of this Agreement, the following types and limits of insurance prior to the commencement of work by the consultant.

1) Worker's Compensation Insurance with statutory limits as required by Statutory Law.

2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than one million dollars ($1,000,000.00) per occurrence to protect the Consultant against claims for bodily injury or death and damage of property of others. This shall cover the use of all equipment, hoist and vehicles on the site(s) not covered by automobile liability under subsection (3) below. If the Consultant has a "claims made" policy, then the following additional requirements apply: The policy must provide a "retroactive date" which must be on or before the execution date of the Agreement; and the extended reporting period may be less than five (5) years following the completion date of this Agreement.

3) Automobile Liability Insurance on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than one million dollars ($1,000,000.00) per occurrence.

4) Professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's Services under this Agreement by Consultant or its employees. The amount of this insurance shall not be less than two million dollars ($2,000,000) on a combined and single-limit per occurrence basis.

(B) All policies shall contain the following endorsement: An endorsement providing City with thirty (30) days written notice of cancellation or material change in any policy, policy language or terms.

(C) All insurance policies required of the Consultant hereunder shall be primary insurance with respect to the City, its officers, employees and agents.

7. Termination of Agreement:

(A) The City may, by ten (10) days written notice, terminate this Agreement, in whole or in part, at any time. Upon receipt of such notice of termination by the City, the Consultant shall discontinue all services (unless the notice directs otherwise) and deliver to the City all data, reports, estimates and such other information, materials and work product as may have been accumulated by the Consultant in performing the work and services as set fourth in this Agreement.

(B) If termination is for the convenience of the City, the Consultant shall be entitled to compensation for all work performed to date of notice of termination or upon termination. Compensation for work shall be in accordance with the Fee Schedule, Exhibit "A", but shall not be for an amount exceeding that indicated in any of approved Task Orders

(C) If termination is due to the failure of the Consultant to fulfill the obligations under this Agreement, the City may request to deliver to it, in the manner and to the extent directed by the City, any work described above, and compensation for work so delivered and accepted by the City shall be the actual payments authorized by the City.

8. Indemnity: Consultants shall indemnify, defend and hold harmless the City, its officers, agents and employees against any and all liability, claims, action, causes of action or demands whatsoever against them, or in any of them, for injury to or death of persons or damage to the property arising out of, connected with or caused by Consultant, Consultant's employees or agents negligence or willful misconduct during the performance of this Agreement, except for any such loss or damage arising from the sole negligence or willful misconduct of the City.

9. Assignment: Consultant shall not assign or transfer any inters in this Agreement except that claims for monies due to become due from the City under Agreement may be assigned to a bank, trust company or other financial institution of Consultant's choosing.

10. Miscellaneous:

(A) In connection with the performance of work under this Agreement, Consultant agrees not to discriminate against any employee or applicant because of race, sex, color, religion, handicap, age, or national origin.

(B) No member, officer or employee of the City, or member of the City Council no other public official of such locality of localities who exercise any functions or responsibilities, with respect to this Agreement, shall, during his/her tenure, and for the year thereafter, have any interest, direct, or indirect, in this Agreement or its proceeds.

(C) The Consultant warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for commission, percentage, brokerage, or contingent fee.

(D) In the unlikely event of a dispute arising under this Agreement, Consultant shall notify the City promptly in writing of its contentions and submit its claims within five (5) days from the data of such claim. If the dispute arises before the performance of the related work, the written notice shall be submitted prior to commencing such work. In any event, the Consultant shall proceed with the work hereunder in compliance with the instructions of the City, but such compliance shall not be waiver of the Consultant's rights to make a claim provided Consultant has notified the City in writing as set fourth above.

(E) All documents, data, reports and test reports that are a part of the work and services by Consultant under the terms of this Agreement, shall be the property of the City.

(F) This Agreement supersedes any and all Agreements, either oral or written, between the parties hereto with respect to the rendering of services by Consultant for the City and contains all covenants and Agreements between the parties with respect to rendering of such services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

(G) If any provisions in this Agreement is held by a Court of competent jurisdiction to be invalid void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(H) If any actions at law or in equity, including an actions for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitle to reasonable attorney's fees, which may be set by the Court in the same action, or in a separate action, brought for that purpose, in addition to any other relief to which that party may be entitled. Any lawsuit pertaining to any to pertaining to any matter arising under, or growing out of this Agreement shall be instituted in Kern County, California.

(I) This Agreement will be governed by and construed in accordance with the laws of the State of California.

(J) Upon request, records, books, documents and papers of the Consultant shall be made available to the City or any of its duly authorized representatives to examine, audit or otherwise review such records pertaining to the services provided under this Agreement.

(K) Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to perform the work and services it is required to perform under this Agreement.

(L) Each and every provision of the law or clause required by law to be inserted herein in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein and if, through mistake, or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party, this Agreement shall be physically amended to make sure insertion or correction.

(M) This Agreement calls for the performance of the services of Consultant as an independent contractor, and Consultant will not be considered an employee of the City for any purpose, and is not entitled to any of its benefits provided by the City to its employees. This Agreement shall not be construed as forming a partnership or any other association with Consultant other than that of an independent Contractor. Consultant shall have no authority beyond that given in this Agreement to act on behalf of the City as an agent, nor to bind the City to any contracts or obligations.

(N) Each individual executing this Agreement represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of the organization or corporation named herein and this Agreement is binding upon said corporation or organization in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first above written.

CITY OF DELANO	MENDOZA & ASSOCIATES
Grace Vallejo	
Mayor	Consultant
ATTEST	APPROVED AS TO FORM
Phyllis A. Kraft	
Phyllis A. Kraft, City Clerk	Alan Peake, Esq., City Attorney

Attachments: Exhibit "A",