

# REQUEST FOR PROPOSALS



## PLANS AND SPECIFICATIONS

### ORO DAM BOULEVARD AND FEATHER RIVER BOULEVARD ADDITIONAL TURN LANES

CITY OF OROVILLE  
PUBLIC WORKS DEPARTMENT  
1735 MONTGOMERY STREET  
OROVILLE, CA 95965

MAY 2016

REQUEST FOR PROPOSALS  
PLANS AND SPECIFICATIONS  
ORO DAM BOULEVARD AND FEATHER RIVER BOULEVARD  
ADDITIONAL TURN LANES

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ATTACHMENTS:

- CURRENT PEAK HOUR TURNING MOVEMENT COUNTS – TCIP
- CURRENT PEAK HOUR TURNING MOVEMENT COUNTS – CORRIDOR STUDY
- 2030 PEAK HOUR TURNING MOVEMENT COUNTS - TCIP
- PROJECT EXHIBIT – TCIP
- PROJECT EXHIBIT – CORRIDOR STUDY
- CALTRANS PROJECT PRELIMINARY LAYOUT
- PROFESSIONAL SERVICES AGREEMENT

**REQUEST FOR PROPOSALS (RFP)**  
**PLANS AND SPECIFICATIONS FOR ORO DAM BOULEVARD AND FEATHER**  
**RIVER BOULEVARD ADDITIONAL TURN LANES**  
**PROPOSAL CERTIFICATION FORM**

**NOTE: PLEASE ENSURE THAT ALL REQUIRED SIGNATURE BLOCKS ARE COMPLETED.**  
**FAILURE TO SIGN THIS FORM WILL RENDER YOUR PROPOSAL INVALID.**

Issue Date	Tuesday, May 17, 2016
Issuing Agent	City of Oroville
Pre-proposal Scoping Meeting	None Scheduled
Requests for Information Due By	Tuesday, May 31, 2016
Proposal Due Date	Tuesday, June 14, 2016
Proposals Directed To	Rick Walls, Interim City Engineer
Number of Proposal Copies	Three (3) hard copies and 1 CD

In compliance with this Request for Proposals and to all conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation. By signature hereto, the proponent certifies that all representations and certifications contained in its proposal are complete and accurate as required.

Name of Firm	
Address of Firm	
Contact Name	
Signature	
Title	
Date	
Phone Number	
Alternate Phone Number	(optional)
FAX Number	
Federal Employee ID Number	(if applicable)

## 1.0 Overview

The City of Oroville (City) is advertising for proposals (Request for Proposals – “RFP”) from qualified and experienced engineering consultants to secure engineering design services for the preparation of plans, specifications, and cost estimates (PS&E) and related construction documents for the addition of turn lanes at the intersection of Oro Dam Boulevard (State Route 162) and Feather River Boulevard (Intersection). The project is described in more detail in Section 6.0.

All responses to this RFP are due to the City **by 5:00 p.m. on Tuesday, June 14, 2016** (Submission Deadline). Consultants that become aware of and are interested in responding to this RFP are directed to Contact the City to be placed on a list of RFP recipients. The list will contain the principal contact person and email address for each Consultant interested in responding to this RFP. This will ensure that City prepared responses to Requests for Information (RFI’s) will be received by all those preparing RFP responses.

## 2.0 Proposal Requirements

Proposals must be submitted using the following methods:

Three (3) printed copies and 1 CD of the proposal must be received prior to the Submission Deadline. Proposals shall be submitted to the following address:

City of Oroville  
Department of Public Works – Engineering Division  
Attn: Rick Walls, P.E., Interim City Engineer  
1735 Montgomery Street  
Oroville, CA 95965

Subject: RFP – Engineering Design Oro Dam Boulevard Additional Turn Lanes

Proposals may be submitted via personal delivery, overnight courier (e.g., FedEx or UPS) or U.S. Mail. Proposals must be received by or before 5:00 p.m. on Tuesday, June 14, 2016, the Submission Deadline. Proposals that are deposited with an overnight courier or post marked prior to the Submission Deadline but received after the Submission Deadline will not be considered by the City. Accordingly, although delivery via overnight courier and U.S. Mail is permitted, it is strongly suggested that proposers consider personal delivery to better ensure that proposals are timely received, particularly as the Submission Deadline draws near.

Submitted proposals shall be maintained as confidential records of the City up to the Submission Deadline. Proposers may withdraw, modify and/or resubmit a proposal prior to the Submission Deadline but not after. Proposers shall be bound to the terms of their proposal following the Submission Deadline, however, the City, in its sole and absolute discretion, reserves the right to accept post deadline modifications if it is determined that such modifications are in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the proposer to correct them.

- 2.1 Proposers shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the proposals; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFP. The City is not liable for any costs incurred by a proposer in response to this RFP. Whether or not a proposer is awarded a contract pursuant to this RFP, no proposer shall be entitled to reimbursement for any costs or expenses associated with the proposer's participation in this RFP process.
- 2.2 Late proposals will not be considered.
- 2.3 The City reserves the right to reject any and all proposals received as a result of this RFP. The City's potential award of a contract will not be based on any single factor nor will it be based solely or exclusively on the lowest cost proposal. If a contract is awarded, it will be awarded to the proposer who in the judgment of the City has presented an optimal balance of relevant experience, technical expertise, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal is best for the City.
- 2.4 The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award contract.
- 2.5 The City reserves the right to investigate the qualifications of any proposer under consideration including proposed subcontractors and parties otherwise related to the proposer and require confirmation of information furnished by a proposer, or require additional evidence of experience and qualifications to provide the services or otherwise discharge the obligations required by this RFP.
- 2.6 Following the Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 6250 et seq.) reserves the right to make copies of all submitted proposals available for inspection and copying by any interested

member of the public, except to the limited extent the City determines that any information contained in a proposal is legally privileged under the California Public Records Act. By submission of a proposal, proposers acknowledge and agree that their proposal and any information contained therein may be disclosed by the City to interested members of the public, including other proposers.

- 2.7 The City reserves the right to approve or disapprove of particular subcontractors, joint venture partners, or other proposed team members.
- 2.8 The City reserves the right to evaluate responses in terms of the best interests of the City, applying criteria provided in this RFP and any other criteria the City, in its sole discretion, deems pertinent.
- 2.9 By the submission of a proposal, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached to this RFP. By submission of a proposal, each proposer agrees to execute a PSA with the City in the form attached hereto, inclusive of all stated terms and conditions relating to indemnification, required insurance and standard of care requirements. If a proposer is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the proposer must identify the provision(s) in question and provide an explanation as to why the proposer cannot comply with such provisions. If a proposer's objection to a certain provision of the PSA is merely a question of added cost, the proposer shall indicate in the proposal the difference in cost associated with complying with the provision(s) versus the cost associated with the City's waiver or modification of the provision(s). The City shall be under no obligation to make modifications to the PSA after a contract has been awarded and proposers shall be deemed to have incorporated all costs associated with compliance with the PSA into their proposal. A proposer's inability to comply with one or more provisions of the PSA shall be a factor that will be considered by the City in determining which proposal will serve the best interest of the City when all other factors are taken into account.
- 2.10 All proposals must remain valid for a minimum period of sixty (60) calendar days after the Submission Deadline. Responses may not be modified or withdrawn by the proposer during this period of time except in accordance with this RFP and with written permission granted by the City.
- 2.11 Proposers may withdraw their proposal prior to the Submission Deadline.

### **3.0 Contract Administration**

The Public Works Director, or alternate designated representative, will be the contract administrator on behalf of the City.

### **4.0 Requests for Information and Addenda**

- 4.1 All questions or requests for clarification shall be submitted via email to Rick Walls at [wallsr@cityoforoville.org](mailto:wallsr@cityoforoville.org) by or before 5:00 p.m. on Tuesday, May 31, 2016. The City will prepare written responses to all RFI's received by this deadline which will be emailed to all Consultants on the RFP email list. The City will attempt to have all RFI's responded to by or before Monday, June 6, 2016.
- 4.2 If it becomes necessary to revise any part of this RFP, an addendum will be prepared posted to be emailed to all Consultants on the RFP email list.

### **5.0 Proposer's Responsibilities**

- 5.1 It is presumed that each proposer has read and is thoroughly familiar with the scope of services to be performed under this RFP.
- 5.2 The proposer agrees that, if a contract is awarded to a proposer, the proposer shall make no claim against the City because of any estimate or statement made by any employees, agents, or consultants of the City which may prove to be erroneous in any respect.

### **6.0 Scope of Services**

The intersection of Oro Dam Boulevard (ODB) and Feather River Boulevard (FRB) is currently operating at Level of Service "D" for the PM peak hour period. ODB eastbound traffic is inhibited by the absence of a dedicated right turn lane onto southbound FRB. In addition, severe traffic queuing occurs in the dedicated left turn lane from eastbound ODB to southbound FRB.

Two traffic related studies have been completed that include an analysis of the traffic conditions at the Intersection. The first is the 2012 Transportation Capital Improvement Program (TCIP) and Impact Fee Update Report. The second is the SR 162 Corridor Plan which has been release as a public draft. Both studies propose similar, but different recommendations for the addition of turn lanes to improve traffic circulation.

Intersection project diagrams and peak hour turning movement count exhibits from each of the above referenced studies are attached to this RFP.

The City is seeking a qualified proposer to provide technical consulting services related to the design of traffic intersection improvements. The proposer should have significant experience in preparing plans, specifications, cost estimates and permits for municipal traffic improvement projects. The objective of the Project is to complete the design and secure approval of all plans, specifications, estimates, and permits from all applicable agencies in order to immediately thereafter advertise, bid, and award a construction contract as soon as possible. The ultimate goal is to complete the intersection improvements prior to the opening of the Walmart Supercenter approximately one year from now.

The following tasks are identified for the scope of services:

**Task 1 – Project Management and Meetings**

Consultant shall budget the necessary project management time to manage all aspects of the project including preparation of monthly invoices. Invoices shall be billed by the task number and shall show the total task budget, amount billed each month and task budget balance. Consultant shall budget one (1) kick off meeting and two (2) post kick-off project meetings to be held at Oroville City Hall.

**Task 2 – Utility Identification/Research and Caltrans Coordination**

Identify all utility facilities within the Projects boundaries that may interfere with Project construction. The Consultant shall also be required to investigate the presence of existing utilities by contacting utility owners and investigating available documentation and surface indicators. The Consultant shall schedule a kick off meeting between Caltrans, City and Consultant to discuss both utility facilities and a Project concepts.

**Task 3 – Project Surveying**

The Consultant shall perform a topographical land survey of the surface conditions within the Intersection and along those extents of ODB and FRB necessary to design the proposed Intersection improvements. Surveying shall include all defined project boundaries and its immediate surroundings, identifying road, manhole and invert elevations, structures, utilities, existing road markings, sign and signal placements, islands and medians, and any other features that will affect the design and construction of the project. There is no deliverable for this task.

#### **Task 4 – Preliminary Project Design**

Consultant shall review available turning movement data for existing and future conditions in order to provide the City recommendations and options for improving Intersection operation. Consultant shall review and provide a technical opinion on the merits of the two sets of Intersection recommendations provided to the City. It is desirous to construct a Project without the need to purchase and acquire right-of-way (ROW). Consultant shall develop preliminary Project options for Intersection improvements both without and with the need for additional ROW. If ROW is needed for any option, Consultant is encouraged to develop design parameters that minimize ROW requirements.

Preliminary design options shall include a plan view drawing for each option to include lane designations/re-arrangements within the existing ROW and existing infrastructure impacts for the options. For those options that require any ROW, preliminary (not survey grade) ROW needs shall be shown by location. For each option, Consultant shall develop a LOS analysis to include current and future predicted turning movement counts resultant from the improvements.

Once a final option has been selected by the City and Caltrans, Consultant shall prepare project plans consistent with Caltrans specifications. Deliverables shall include option layouts as described in this section.

#### **Task 5 – Right of Way Mapping**

If the City chooses an option requiring ROW, Consultant shall develop survey grade metes and bounds plats that can be used for land acquisition. For budgeting purposes, Consultants are instructed to include the cost for two small ROW takes, assuming one each for ODB and FRB. Consultant shall include the cost for one (1) appraisal report for two (2) ROW areas. Since the purchase of additional ROW would need to be facilitated by Caltrans, Caltrans appraisal standards would apply. At a minimum, the appraisal shall be prepared under the supervision of and shall be signed by a California Certified General Real Estate Appraiser. However, this Project is not funded by federal or state grant funds, therefore, federal appraisal standards do not apply. Deliverables for this task, if applicable, shall include ROW plats, legal descriptions and appraisal report.

#### **Task 6 – Project Plans**

The Consultant shall prepare, design and deliver 60%, 90% and final plans for the construction of the selected option for the Intersection. Plan sheet content shall be as follows, as a minimum:

- Cover sheet with drawing index and from:to station numbers.
- Plan sheets showing the locations of all road surface improvements and infrastructure modification work required (demolition, grading, trenching, excavation, concrete, etc.).
- Plan sheets showing limits of existing striping and markings removal, new striping and marking required, sign relocations and other related work.
- Traffic signal sheets showing all necessary modifications to the existing signals that are required for the selected option. These modifications are to include any and all controller, phasing, traffic loops, traffic signal heads modifications that may be required.
- Other construction details sheets that may be required for new infrastructure improvements or modifications to existing infrastructure.

#### **Task 7 – Project Technical Specifications**

Prepare technical specifications, for bid purposes, in conformance with the current Standard Specifications for Public Works Construction (Green book) and other applicable agency (Caltrans) standard plans, specifications, and guidance documents for the necessary construction work. Specifications need to address methods and materials for the physical work and also need to address the selected methods and equipment for shoring equipment to be used, with an emphasis on Oro Dam Boulevard.

#### **Task 8 – Construction Estimate**

Prepare an engineer's construction estimate for each of the Element 1 Projects. Cost estimates shall have quantities and unit prices for each logical work element.

### **7.0 Cost Proposal and Hourly Rates**

The proposal shall indicate the compensation structure for performing specific services identified in Tasks 1 through 8 (e.g., flat lump sum or hourly rate structure). The proposal shall also include any and all rates charges for incurred costs and expenses which the proposer intends to pass along to the City (e.g., photo copying, postage, travel and any pass through costs and expenses). To the extent that a proposal contemplates the use of subconsultants to perform any one or more of the above described tasks on the proposer's behalf, the proposal shall identify any subconsultant costs and expenses that

will be passed through to the City and the compensation structure for such costs and expenses. In so far as the proposer's proposal contemplates an increase in compensation rates or charges prior to the completion of Tasks 1 through 8, and during the term of the portion of the PSA or any extension term, the proposal shall clearly indicate when such increases will take effect and by how much.

The cost proposal shall present costs for each task to include all staff and administrative position and hourly rates, total estimated hours and subtotals for each task, and sub tasks, if any.

## **8.0 Proposal Format and Content**

### **Proposal Certification Form**

**Proposer's Background** – Background on the Consultant and sub-consultants and area(s) of professional expertise relevant to this RFP.

**Qualifications and Experience of Proposer's Personnel** – Summary of the relevant experience, work history, training, education and special certifications of the proposer's personnel who will be performing the professional services contemplated under this RFP on the proposer's behalf. Proposers shall provide identical information for all subconsultants' performing any of the tasks or services contemplated under this RFP on the proposer's behalf. The summary shall also include the office location of key personnel proposed to work on this contract.

**Project Approach** – Summary of the proposed approach to designing the replacement and new sanitary sewers. The proposer shall explain the way in which the proposer will completely and timely complete all of the tasks called for under the RFP along with an estimate of the time (project schedule) it will take to complete each task.

**Proposed Personnel** – Resumes for the project manager and each of the other key personnel, including sub-consultants, which will be performing the majority of the work on this project/contract.

**References** – Each proposal must include at least 3 public agency references going back at not more than five (5) years from the issuance of this RFP in which the proposer was engaged to perform tasks similar to those requested under this RFP. References should place an emphasis on past projects in which the personnel to be used by proposer for this project were deployed. The references should include the name, title and contact

information of the public agency officer or employee responsible for overseeing the proposer's work.

**Schedule** – Schedule detailing when each Task is proposed for completion. It is the City's goal to complete the PS&E by December 2016 to allow for possible construction by March 2017. Proposers should factor in additional time that may be required due to reasonably foreseeable types of delays. The proposal shall also identify all critical task sequencing and critical paths required to ensure that the work is timely and completely completed. The schedule shall also factor in reasonable review and feedback periods for draft deliverables by City staff as well as any and all legally mandated review period and comment period, including those that may be required by third party regulatory agencies. Consultant shall expect a 2-week turnaround time for the City's review of deliverables.

**Cost Proposal** –Detailed cost estimate for specific Tasks identified in the RFP and a schedule of rates for each proposed personnel that may be tasked to complete the Project. The Task-specific cost estimate shall include an estimate of the number of hours per staff member by proposed task and clearly identify an hourly rate schedule for the proposed staff. Proposer rates for clerical, reproduction, and any proposed reimbursable shall also be included for each specific Task.

## **9.0 Evaluation Criteria**

Each proposal shall be evaluated on the basis of the proposer's expertise, experience and training and the expertise of its key personnel along with prior contracting history, approach to the project, cost, proposed schedule and compliance with the RFP requirements including the terms of the attached PSA. Each such factor shall be weighted by the City as follows:

**Expertise, Experience & Training Plus Prior Contracting History (35%)** – The expertise, experience and training of the proposer and its key personnel and previous experience with similar work in similar fields and qualifications and depth of the staff that will perform the work on this project. This factor includes evaluation of the proposer's prior contracting history and references for other municipalities.

**Project Approach (30%)** – The proposer's responsiveness in developing a comprehensive plan while meeting regulatory requirements and the City's specific needs.

**Cost (20%)** – The proposed compensation structure (inclusive of hourly rates of compensation, pass through costs and subconsultant costs) for the performance of Tasks 1 through 6, inclusive of its proposed not-to-exceed sum. The proposers proposed

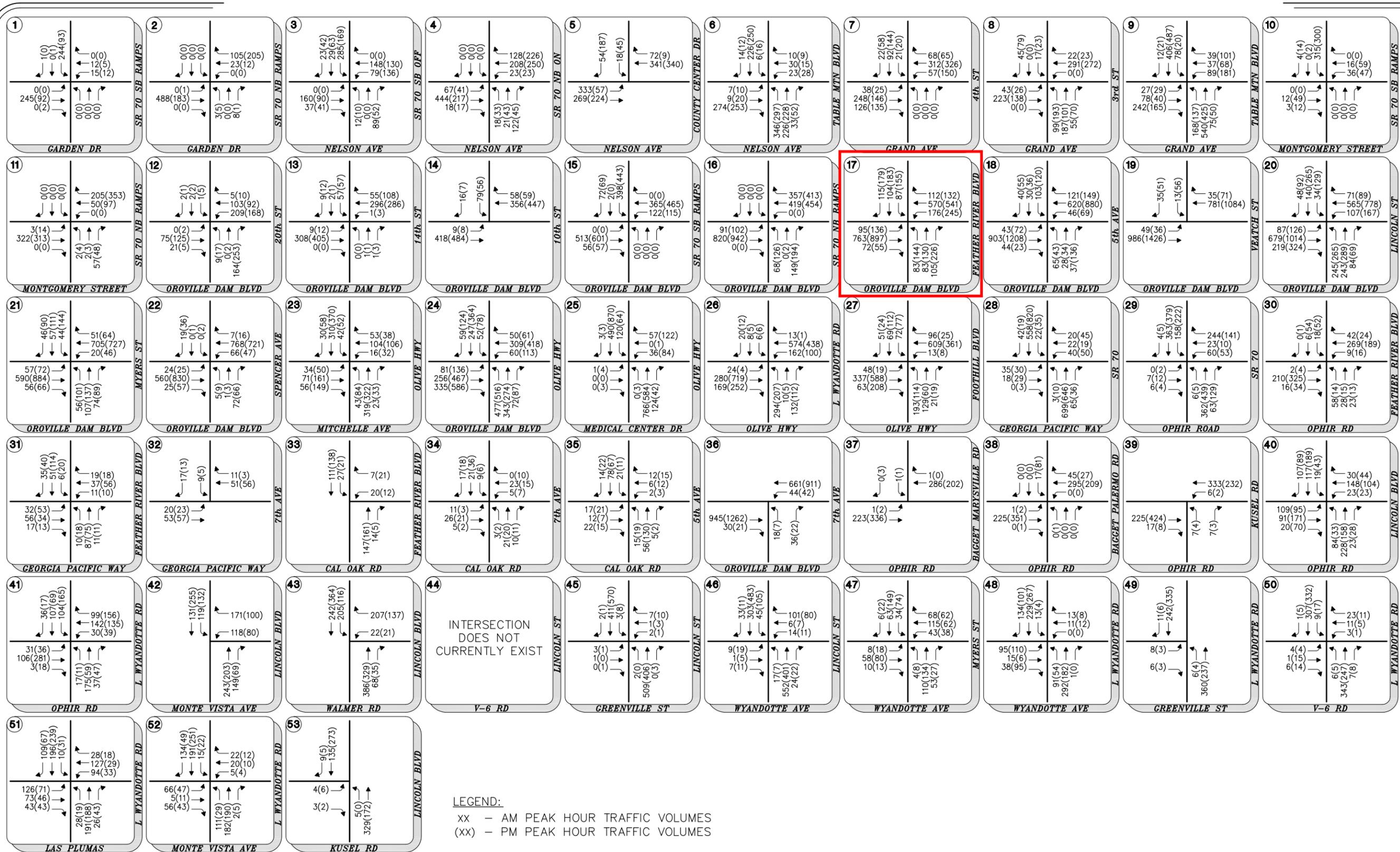
strategy for containing costs incurred by City while still meeting the objectives and standards set forth under the RFP.

**Schedule (10%)** – Proposal for completing the project in a timely manner, inclusive of the proposer’s ability to identify critical paths for the timely and competent completion of all work contemplated under the RFP.

**Compliance with RFP (5%)** – The ability of the proposer to comply with all instructions set forth under this RFP as well as the proposer’s ability to agree to all of the terms and conditions of the attached PSA without modification, particularly as relates to indemnification, insurance requirements and standards of care.

## **10.0 Selection Process**

City staff will review and rank the proposals and may or may not choose to interview several of the top ranked proposers. It is anticipated that the proposer will be selected in early July 2016 with a contract award anticipated in August 2016.



Oroville TCIP and Impact Fee Update

Figure 6

# Existing Intersection Turning Movements



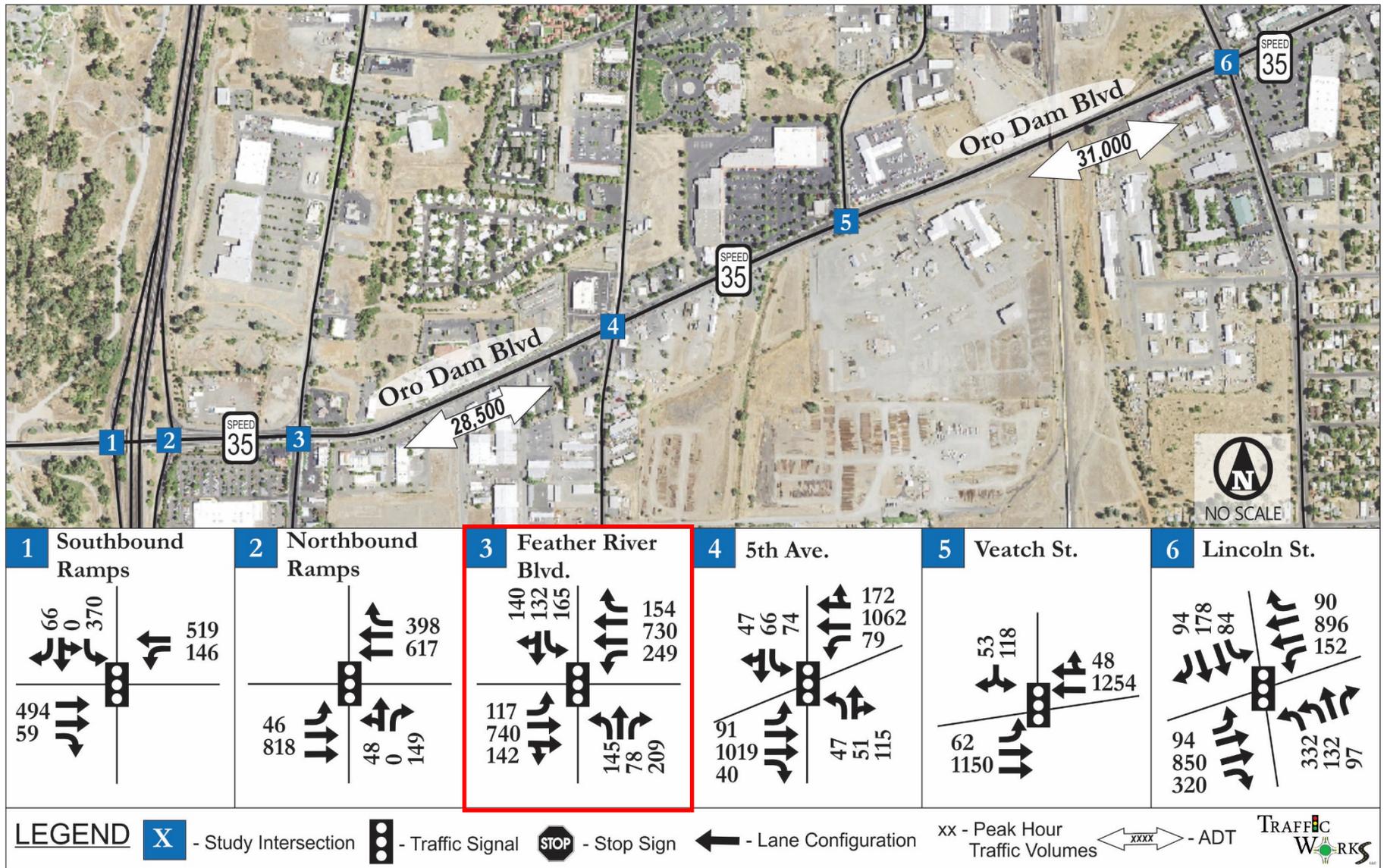
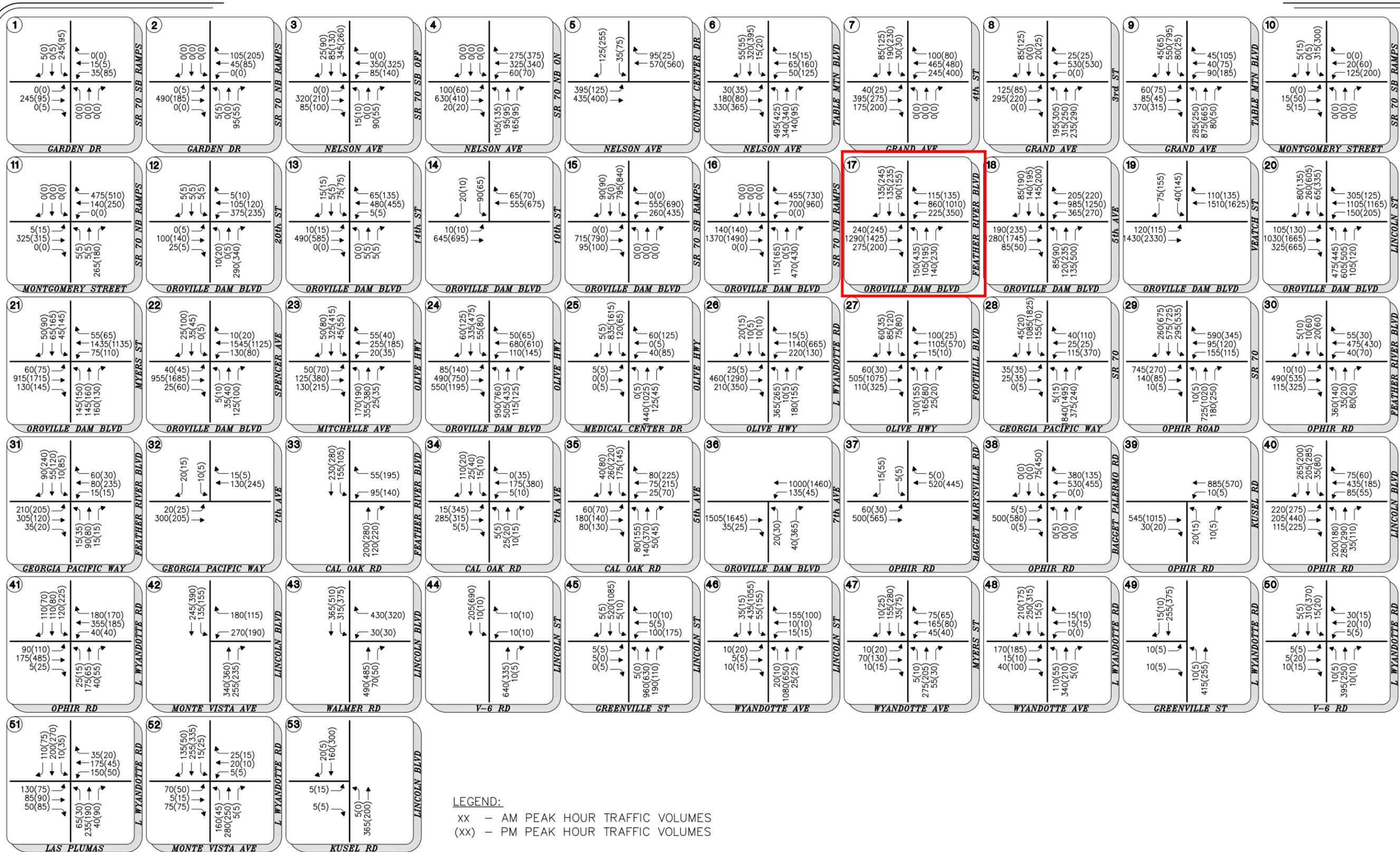


FIGURE 3-5. EXISTING PEAK HOUR TURNING MOVEMENT COUNTS (PANEL 1)

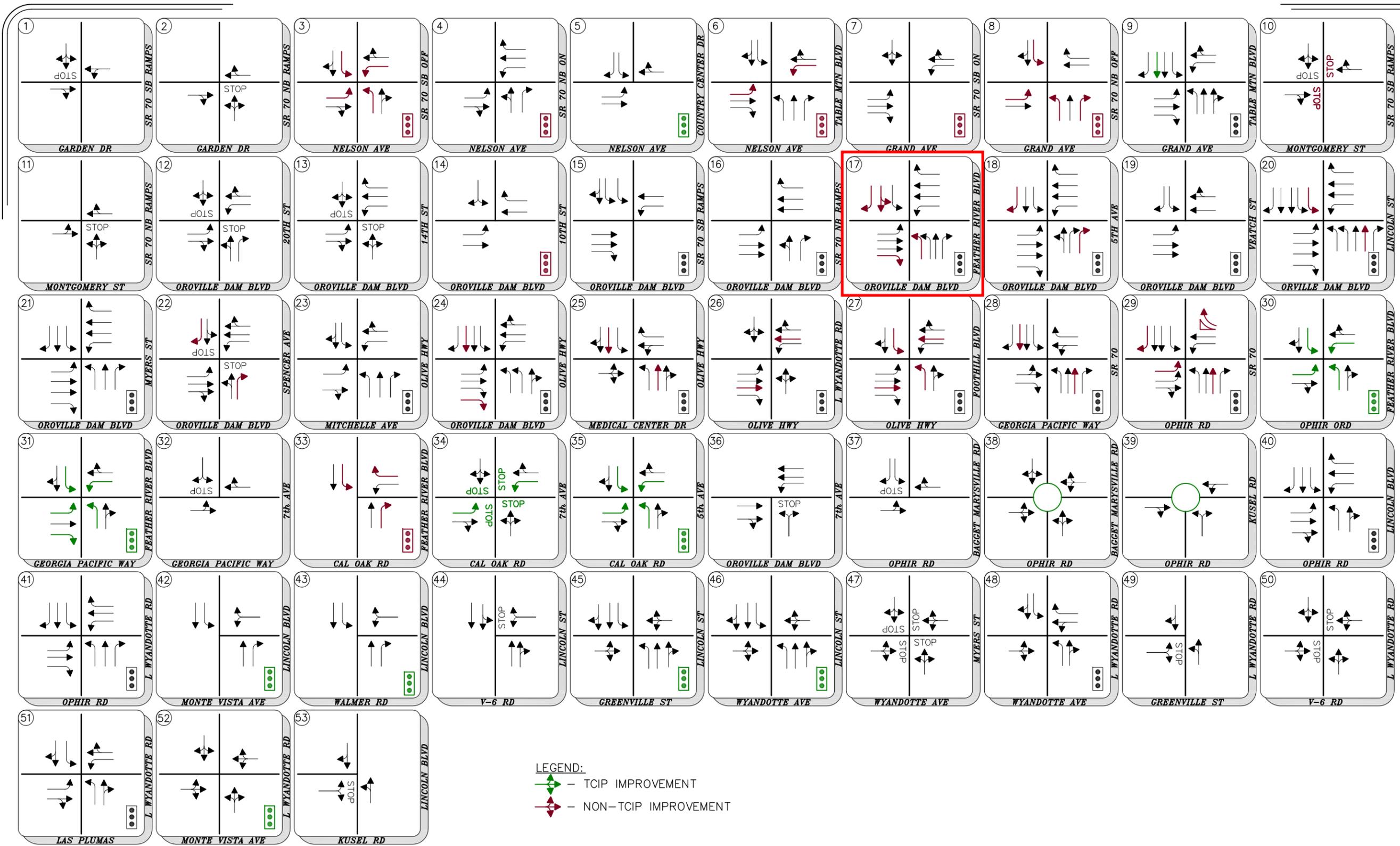


Oroville TCIP and Impact Fee Update

Figure 7

# Year 2035 Peak Hour Intersection Volumes



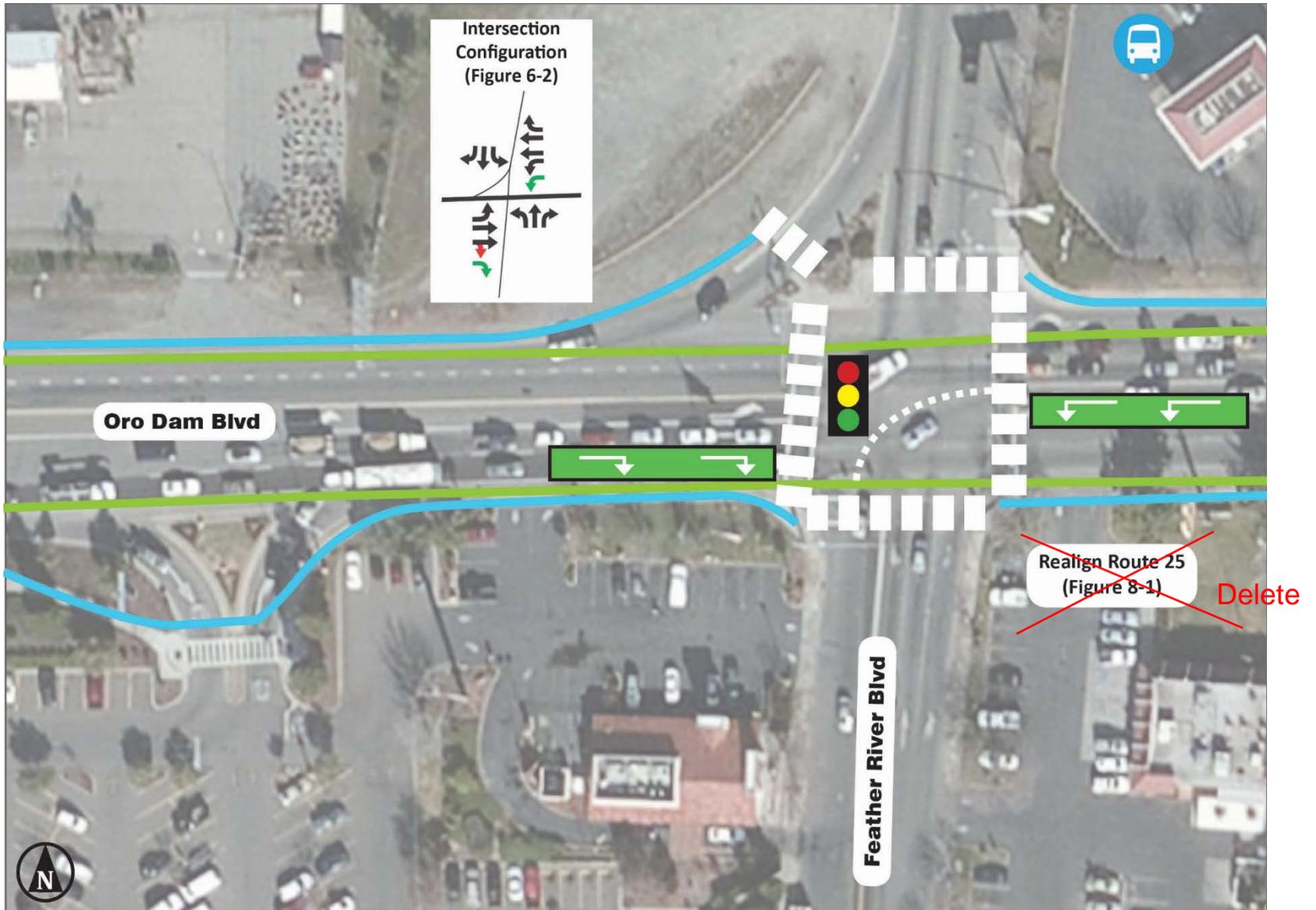


Oroville TCIP and Impact Fee Update

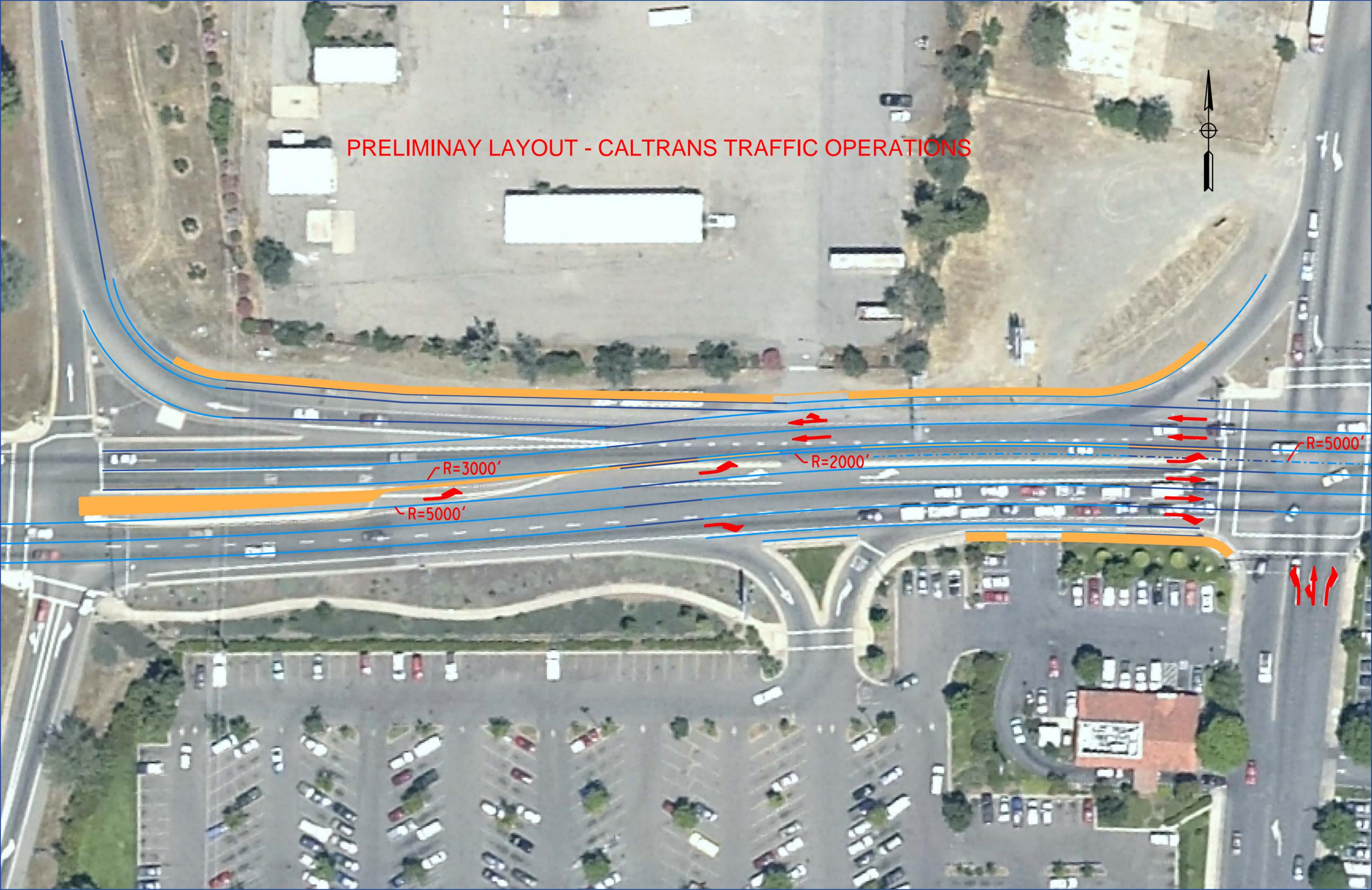
Figure 8

Proposed Year 2035 Lane Geometrics and Control Improvements





PRELIMINARY LAYOUT - CALTRANS TRAFFIC OPERATIONS



R=3000'

R=5000'

R=2000'

R=5000'



## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of \_\_\_\_\_, 2016 by and between the **City of Oroville** (“City”) and \_\_\_\_\_ (“Consultant”).

### **RECITALS**

- A. The Consultant is specially trained, experienced and competent to provide engineering design services relating to upsizing of various sewer mains as required by this Agreement; and
- B. The Consultant possesses the skill, experience, ability, background, license, certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- C. City desires to retain Consultant to render professional services as set forth in this Agreement.

### **AGREEMENT**

- 1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit “A” which is attached hereto and incorporated herein by reference.
- 2. Time of Performance. The services of Consultant shall commence upon execution of this Agreement and shall continue until the Project is completed to the satisfaction of the City.
- 3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Fee Schedule set forth in Exhibit “A,” which is

attached hereto and incorporated herein by reference. **In no event shall Consultant's compensation exceed the amounts of \$\_\_\_\_\_ without additional written authorization from the City.** Payment by City under this Agreement shall not be deemed a waiver of defects in Consultant's services, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff.
5. Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of Consultant's services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without prior written authorization from City.
6. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to

compensation for services properly performed up to the effective date of termination.

7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents, and other writings to City within three (3) days after written request.
8. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in documents or works of authorship fixed in any tangible medium of expression, including but not limited to, data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents and Data"). Consultant shall require all subcontractors to agree in writing that City is granted a nonexclusive and perpetual license for any Documents and Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents and Data. Consultant makes no such representation

and warranty in regard to Documents and Data which may be provided to Consultant by City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

9. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.
10. Consultant's Books and Records.
  - a. Consultant 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, expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

- b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Administrator, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when its practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the

records be given to the City and that the records and documents be maintained by City Hall.

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.
  
12. Interest of Consultant. Consultant (including principals, associates, and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:
  - a. will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or any City official, other than normal agreement monitoring; and
  - b. possesses no authority with respect to any City decision beyond

rendition of information, advice, recommendation or counsel.

(FPPC Reg. 18700(a)(2).)

13. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
14. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.
15. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that 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, insurance and approvals which are required by the City for its business.
16. Indemnity. Consultant agrees to indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including reimbursement of reasonable costs and expenses in connection therein), arising from its negligent performance of this

Agreement or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising from the negligence or willful misconduct of the City, its officers, agents, employees or volunteers. With regard to any claim alleging Consultant's negligent performance of professional services, Consultant's defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of its actual indemnity obligation hereunder.

17. Insurance Requirements. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the Agreement, the insurance coverage and policies as set forth in Exhibit "B" attached hereto.
18. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:                      Rick Walls, Interim City Engineer  
    City of Oroville  
    1735 Montgomery Street  
    Oroville, CA 95965-4897

If to Consultant: Holdrege & Kull  
8 Seville Court, Suite 100  
Chico, CA 95928  
Attn: Shane Cummings

19. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations are superseded in total by this Agreement.
20. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.
21. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express prior written consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

22. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
23. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
24. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in Butte County Superior Court or the United States District Court, Eastern District of California.
25. Litigation Expenses and Attorney's Fees. If either party to this Agreement commences any legal action against the other part arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

27. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
28. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or 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 rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
29. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to

initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF OROVILLE

By: \_\_\_\_\_  
Linda L. Dahlmeier, Mayor

By: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_  
Scott E. Huber, City Attorney

By: \_\_\_\_\_  
Donald Rust, Acting City Clerk

Attachments: Exhibit A – Materials Testing Bid Schedule  
Exhibit B - Insurance Requirements