

CITY OF VICTORVILLE



REQUEST FOR PROPOSALS FOR

Constructability Review and Construction Management Services for the Bear Valley Road Overhead at BNSF Railroad Project

Project BM21-034

PROPOSAL SUBMISSION DUE DATE AND TIME:

October 22, 2020

AT 2:30 P.M./PST

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(Included at the end of Section E)

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Certification and Conflict of interest Forms:

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Section A – Request for Proposals

1. **Introduction:** The City of Victorville (“City”) is requesting proposals from qualified consultants to perform a **Constructability Review** on final bid documents and provide **Construction Management Services for the Bear Valley Road Overhead at BNSF Railroad Project**. The construction and construction management of this project will be partially funded by federal funds. Consultant expertise shall be such that the construction and construction management of the project complies with all funding requirements and remain eligible for reimbursement. Consultant shall demonstrate familiarity of providing services for federally funded projects and have a clear understanding of requirements/needs to facilitate the project through Caltrans Local Assistance and Local Assistance Procedures Manual.

As time is of the essence, the City intends to award two separate Consultant/Professional Services Agreements (“Agreements”) to the highest-ranking consultant. The consultant ranking criteria is included in Section G of this RFP. One Agreement will be to perform a Constructability Review on the final bid documents to be awarded within ninety (90) days after opening of the proposals. The Agreement for Constructability Review will not be federalized. The second Agreement will be to provide construction management services. This construction management service agreement will be funded with federal funds and will be awarded once the Independent Office of Audits and Investigations (“IOAI”) reviews and approves consultant’s Cost Proposal package as detailed in Section G. Consultant shall comply with Chapter 10 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process. Exhibit 10 including Exhibits 10-A & 10-B shall serve as reference Agreement terms for this second contract award.

2. **Procurement Representative:** The City has assigned the following City Staff as the Procurement Representative for this solicitation.

Mr. Bruce Miller
City of Victorville – Finance Division
14343 Civic Drive, 2nd Floor, Victorville, CA 92392
Phone (760) 955-5085 Fax (760) 269-0045
E-mail: bmiller@victorvilleca.gov

3. **Submittal Location, Closing Date and Time:** Proposals are due on or before **Thursday, October 22, 2020 at 2:30 p.m.** PST at the aforementioned address. Faxed or emailed proposals will not be accepted. Please refer to Sections E thru G for more submittal requirements.

4. **Inquiries:** Inquiries regarding this solicitation must be sent to the Procurement Representative designated above only. Any prospective Proposer desiring an explanation or interpretation of the solicitation, specifications, etc., must request it in writing, no later than **Friday, October 9, 2020** to allow a reply to reach prospective Proposers before the proposal submission date. In order to receive such information, Proposers must submit a request in writing to the individual identified above. Verbal explanations or instructions given during any phase of this solicitation will not be binding. Any information given a prospective Proposer will be furnished promptly as an amendment to the solicitation, if that information is necessary in submitting proposals or if the lack of it would be prejudicial to other prospective proposers.

5. **Selection Criteria:** The Engineering Division of the Public Works Department will review proposals and select the firm(s) most qualified to provide the requested services. Staff may contact the firm(s) for additional information or clarification. Selection among the proposals received will be based upon the criteria specified under Section G of this request for proposals.

The City looks forward to receiving innovating proposals focused on reducing the construction duration of the project, streamlining construction processes and maintaining federal reimbursement eligibility of the construction and construction management phases of the project.

6. **Selection Committee:** All proposals will be reviewed by a selection committee with regards to qualifications and experience. The top three (3) highest ranked consultants may be invited to make a virtual oral presentation, if needed. The final recommendations will be presented to the City Council for a majority vote. The selection committee shall consist of representatives of the City as well as other stakeholders.

7. **Protest Procedures:** Any protests related to this solicitation shall be in accordance with the provisions of Chapter 2.28, Article VI, Section 2.28.290 of the Victorville Municipal Code. Please refer to Exhibit 10-Attachment B for protest procedures on federally funded Agreement.

Dated September 24, 2020
Signed, City Clerk

Section B – Project Background

1. **General:** The construction of the Bear Valley Road Overhead at BNSF Railroad Project (the “Project”), generally consists of rehabilitating the Bear Valley Road over BNSF bridge to correct deficiencies, to seismically retrofit the bridge to meet current structural standards; and to widening the bridge to meet AASHTO Design Guidelines and City of Victorville General Plan Requirements.

The Project will widen the existing bridge on both sides of the existing Bear Valley Road over the BNSF Railroad to accommodate sidewalks, shoulders, 6 travel lanes and a center turn lane. The Project will also provide signals improvements at both Bear Valley Road/Industrial Blvd and Bear Valley Road/Ridgecrest Road intersections. Please refer to Exhibit 1 for a set of Construction Plans and Specifications.

The City intends to advertise, award and administer one construction contract for this Project. The construction and construction management contracts of the Project are being funded by the Highway Bridge Program. All construction and construction management tasks must be in compliance with laws, regulations and policies to ensure eligibility for full reimbursement upon project completion.

2. **Geotechnical and Bridge Reports:** Please refer to Exhibit 2 for the following available geotechnical and bridge related reports:

Bear Valley Road Overcrossing Geotechnical Design Report (GDR 020816)
Bear Valley- Aerially Deposited Lead Investigation Results (ADL 022817)
Bear Valley – Materials Report (MR 020817)
Bear Valley – Foundation Report (FR 020817)
Bear Valley – Asbestos and Deteriorated Lead-Containing Paint Survey Report (ACM LCP Report 021717)

3. **Environmental:** A Categorical Exemption with technical studies was finalized under NEPA on December 10, 2014 (See Exhibit 3). A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program was completed on November 2014 and adopted by the City on January 2015 (See Exhibit 4).
4. **Right of Way:** The City of Victorville obtained a Right of Way certification No. 1 from CALTRANS on July 24, 2020 (See Exhibit 5).
5. **Utilities:** As indicated in the Right of Way Certification, there are several utilities within the Project limits; however, only Charter Communication will construct infrastructure in parallel to the Project construction activities.

6. **BNSF Railroad:** The following are the agreements obtained for the construction of the project within BSNF right-of-way (See Exhibit 6).
 1. Overpass Agreement with BNSF Railway, December 2017 & Letter to Extend
 2. CPUC Authorization to Alter Highway-Rail Crossing Pursuant to General Order 88-B, July 2020

7. **Quality Assurance Program:** Please refer to Exhibit 7 for a copy of the City’s approved QAP dated March 31, 2018.

8. **Construction Schedule:** The duration of the Project construction specified in the construction contract documents is 14 months and is estimated to start February 2021 and continue through August 2022.

The following is the anticipated construction schedule for this Project:

Advertise for construction	March 2021
Open bids	April 2021
Award construction contract	May 2021
Start of construction	June 2021
End of construction	August 2022
Project Closeout	December 2022

9. **Other:** The work shall comply with the requirements of all of the following without limitation, and shall apply to this RFP and any subsequent Agreement(s) as though incorporated herein by reference:
 1. Federal laws
 2. State laws
 3. Local laws
 4. Rules and regulations of governing utility districts
 5. Rules and regulations of other authorities with jurisdiction over the procurement of products

10. **Insurance.** The Consultant shall provide insurance in compliance with all insurance requirements of the City of Victorville as specified in Sections 15 through 20 of the sample agreement included as Exhibit 10.

Section C – Scope of Work

All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

1. **Constructability Review:**

- 1.1 CONSULTANT shall review Project plans and special provisions for possible errors and deficiencies and report such findings to CITY in a format provided by CITY.
- 1.2 Schedule: CONSULTANT shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to CITY, as appropriate, to ensure efficiency of Contractor and CONSULTANT operations and safe and expeditious completion of the Project.
- 1.3 Budget: CONSULTANT shall review the Project estimate, quantities, and provide recommendations to CITY, as appropriate, to ensure efficient utilization of funds and control of Project costs.

2. **Construction Management / Resident Engineer / Inspection Services**

Consultant shall provide a full-time person or persons to provide Resident Engineer, Construction Management and Inspection Services for this Project to ensure that all required improvements are completed in accordance with the Project improvement plans, specifications, City of Victorville Quality Assurance Program, and the funding related requirements of the Federal Highway Administration via Caltrans. All such work shall also be in accordance with all applicable local, state, and federal standards and guidelines as well as the most current edition of the Caltrans Standard Plans and Specification and the City of Victorville's Standard Details and Specifications.

2.1 **Services During Project Advertisement**

Consultant shall provide bid assistance services which would include:

- 2.1.1 Coordinate and attend pre-bid meeting
- 2.1.2 Attend bid opening and properly log all bids
- 2.1.3 Review bids for completeness and responsiveness in particular as it relates to federal contract requirements
- 2.1.4 Perform bid analysis
- 2.1.5 Check contractor references, license, insurance, and sureties
- 2.1.6 Coordinate construction contract award with lowest responsive bidder
- 2.1.7 Complete Exhibit 19-A and compile all supporting documentation to be presented to the Pre-Construction Review meeting with the Department of Transportation. Review meetings are at a minimum four hours long. Key personnel shall attend pre-construction review and shall be responsible for addressing any deficiencies identified during such meetings.

All processes will be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and Local Assistance Procedure Manuals (LAPM).

2.2 Services During Project Construction

Services will be required from award of construction contract through filing of the Notice of Completion.

Upon filing of the Notice of Completion, consultant shall be responsible for properly closing out the Project and for submitting of all required documentation to fulfill federal requirements.

There will be two meetings schedule with the Department of Transportation; a mid-Project review and a post-construction review. Consultant shall properly complete pertinent checklists (LAPM Chapter 19: Exhibits 19-B and 19-C) and provide all supporting documentation at such meetings. Key personnel shall attend meetings in order to report on each pertinent section.

2.2.1 Project Administration

- a. CONSULTANT shall administer Project construction contracts using Caltrans Construction Manual as a guideline.
- b. CONSULTANT shall conduct regular **weekly** Project coordination meetings with Contractor, CITY, local agencies, and design engineer, as appropriate.
- c. CONSULTANT shall prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by CITY for approval.
- d. CONSULTANT shall provide reports as needed to comply with specific funding requirements.
- e. CONSULTANT shall establish and maintain Project records in accordance with the Caltrans Construction Manual. Project record keeping shall include, but are not limited to, correspondence, memoranda, construction contract documents, change orders, claims, CITY and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment. CONSULTANT shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.
- f. CONSULTANT shall establish and maintain a filing system in hard copy files and in an electronic format for each Project using the Caltrans Construction Manual as a guideline. Electronic data documentation will be required to be uploaded weekly to City Server via Portable Hard Drive (USB 3.0) provided by CONSULTANT.
- g. CONSULTANT shall monitor Contractors' construction schedules on an ongoing basis and alert CITY to conditions that may lead to delays in completion of the Project.

- h. CONSULTANT shall prepare and submit a monthly Activity Summary Report for the Project in a format approved by CITY. The activity report shall include among other items status of SWPPP issues, RFIs, construction contract change orders, and notice of potential claims; construction activities completed, ongoing, and upcoming; status of Project budget and schedule, and other highlights and critical issues.
- i. CONSULTANT shall review and ensure compliance with environmental requirements.
- j. CONSULTANT shall participate in partnering sessions with the Contractor, CITY, and Local Agencies, as required.
- k. CONSULTANT shall ensure that the Project meets all provisions of the CITY Construction Materials Quality Assurance Program and Caltrans Quality Assurance Program Manual.
- l. CONSULTANT shall review Contractors' certified payroll records and ensure compliance with the requirements of the construction contract.
- m. CONSULTANT shall ensure that the Project meets all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- n. CONSULTANT shall assure that the Project meets all applicable regulations of the Mojave Desert Air Quality Management District (AQMD) and the State Water Resource Control Board (SWRCB).
- o. CONSULTANT shall maintain redlined as-built plans on an ongoing basis throughout the duration of the Project. Redlined plans shall show all changes made to the original construction contract plans, each change identified with the name of the approver, date of change approval, and CCO number, if applicable.

2.2.2 Construction Coordination

- a. CONSULTANT shall provide a minimum of one qualified Resident/Bridge Engineer to effectively manage the Project.
- b. CONSULTANT's Resident/Bridge Engineer shall act as a prime point of contact between Contractor, CITY, CONSULTANT's QA construction surveyor, CONSULTANT'S materials inspector, and utility companies. CONSULTANT may, when requested by CITY, act as the point of contact between design engineers, cities, and the public. CONSULTANT shall ensure coordination with property owners adjacent to Project right-of-way to ensure timely communication regarding property-condition survey and construction activities and scheduling.
- c. CONSULTANT shall maintain regular contact with CITY'S Project Manager.
- d. CONSULTANT shall coordinate utility relocations with utility companies and their designees, as well as the utility inspector.
- e. CONSULTANT shall proactively review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to CITY. Should CITY determine that changes are necessary, CONSULTANT shall assist in

implementation and processing of change orders in accordance with construction contract documents.

- f. CONSULTANT shall proactively review Project plans and special provisions; monitor, coordinate, and track construction progress schedule and RFIs; and communicate with various agencies prior to construction of any specific elements to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. CONSULTANT shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.
- g. CONSULTANT shall coordinate review of shop drawings and Requests for Information (RFI) with the CITY Project Manager. CONSULTANT shall log and track all submittals and requests.
- h. CONSULTANT shall provide a qualified SWPPP Coordinator who along with the Resident Engineer shall review and certify contractor prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with CITY and the State Water Resource Control Board. The SWPPP Coordinator shall be at a minimum a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) and a Qualified SWPPP Practitioner (QSP). CONSULTANT shall provide at a minimum weekly SWPPP monitoring and shall cooperate with all monitoring agency inspections and field reviews.
- i. CONSULTANT shall coordinate the implementation of any changes with the CITY Project Manager and the design engineer.
- j. CONSULTANT shall review and approve false work and shoring plans.
- k. CONSULTANT shall review and approve Traffic Control Plans and forward to CITY for City approvals, as necessary.
- l. CONSULTANT shall coordinate all Project construction activities with other on- going projects within and adjacent to the Project limits.
- m. Apprentices/Trainee Program Coordination: Consultant shall review and approve contractor's training plan prior to start of work and check for compliance and proper certifications throughout construction in compliance with federal requirements.
- n. Labor compliance: Consultant shall provide a Labor Compliance Officer responsible for obtaining and properly reviewing payroll documents from contractor. Jobsite Poster Compliance. Consultant shall also conduct interviews of acceptable frequency to satisfy federal requirements. If applicable, consultant shall ensure that contractor submits Annual EEO Report.

2.2.3 Construction Inspection

- a. CONSULTANT shall coordinate all required inspections necessary for the Project. CONSULTANT shall ensure that appropriate City and local agencies are notified and present as required throughout the Project. CONSULTANT shall notify CITY immediately regarding any directives,

- recommendations, notices, etc. received from agencies other than CITY.
- b. CONSULTANT shall perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the construction contract documents, all applicable laws, codes, and ordinances.
 - c. CONSULTANT shall exercise reasonable care and diligence to discover and promptly report to CITY any and all defects or deficiencies in the materials or workmanship used in the Project.
 - d. CONSULTANT personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, Caltrans Erosion Control and Highway Planting requirements, safety standards and State Water Resources Control Board requirements. CONSULTANT personnel shall have the ability to read and interpret construction plans and specifications. CONSULTANT personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, CONSULTANT personnel shall be thoroughly familiar with the construction requirements of Caltrans' Storm Water Pollution Prevention Program.
 - e. Assignments to be performed by CONSULTANT personnel shall include, but are not limited to, the following:
 - i. Paving and subgrade inspection, sub-surface & finish surface drainage inspection, structures and foundation inspection, electrical inspection for traffic, signing and striping inspection, quantity calculations, checking grade and alignment, construction traffic control & quality control, hardscape inspection, trenching inspection and duties that may be required to determine that construction of the Project is being performed in accordance with the construction contract documents.
 - ii. Identifying actual and potential problems associated with the Project and recommending sound engineering solutions.
 - iii. Perform basic sampling of construction materials in the field per California Test Method 105 and 125 by both the prime and subconsultant personnel.
 - iv. Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.
 - v. Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities.
 - vi. Preparing construction sketches, drawings, and cross-sections, as necessary.
 - vii. Assisting in the preparation of as-built plans.
 - viii. Providing inspections for environmental compliance.

- ix. Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
- x. Monitoring Contractors' compliance with applicable regulations required by AQMD.
- xi. Other duties as may be required or reasonably requested.

2.2.4 Project Support

- a. Construction Survey
- b. Materials Testing, Source Inspection and Geotechnical Services
 - i. CONSULTANT will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to ensure that structure and roadway construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship.
 - ii. All field and laboratory testing is to be performed in accordance with City's QAP or California Test Methods, where possible.
 - iii. CONSULTANT will be responsible for the accuracy and completeness of all test data compilation and results.
 - iv. All media inquiries shall be directed to the CITY Public Information Office.
- c. Permits
CONSULTANT shall review the Project for permit compliance and coordinate with CITY and the design engineer to ensure that necessary permits are obtained. CONSULTANT shall assist CITY in the coordination, timely processing and verification of approval for all permits. CONSULTANT shall maintain permits and permit documentation on site.

2.2.5 Cost and Schedule

- a. CONSULTANT shall monitor and track the following:
 - i. Construction contract pay item quantities and payments
 - ii. Construction contract change orders
 - iii. Supplemental work items
 - iv. Agency furnished materials
 - v. Contingency balance
 - vi. Project budget
- b. CONSULTANT shall review and monitor Contractor's schedule and inform CITY of any significant changes or deviations in the schedule.
- c. CONSULTANT shall provide and maintain a Project staffing plan of field office personnel based on the Contractor submitted baseline schedule

update. In cooperation with CITY, the staffing plan shall be periodically updated to reflect Project progress and needs.

2.2.6 Construction Contract Change Orders and Claims

- a. CONSULTANT shall receive and evaluate requests for changes and/or substitutions by the Contractor. Construction Contract Change Orders submitted to CITY shall be accompanied by CONSULTANT recommendations. Where applicable, CONSULTANT shall convey proposed changes to design engineer, or other Project consultants. If the requested changes are accepted, CONSULTANT shall negotiate and prepare appropriate construction Contract Change Orders.
- b. CONSULTANT shall attempt to avoid unnecessary construction Contract Change Orders. When a construction Contract Change Order is necessary, CONSULTANT shall consult with CITY prior to its preparation. Unless directed otherwise by CITY, the preferred method of payment for construction Contract Change Orders should be as follows
 - a. Agreed Price
 - b. Adjustment in compensation to a bid item
 - c. Time and materials or Force Account

CONSULTANT shall perform force account analysis to validate cost submitted by the Contractor for construction contract change orders with agreed unit price, lump sum price, and adjustment in components. Analysis shall be based on realistic production and resource needs to complete the work.

All construction Contract Change Orders shall be approved by appropriate City staff and shall be in accordance with the Victorville Municipal Code and Policies.

- c. CONSULTANT shall attempt to identify all potential claims, track and monitor unresolved claims. The CONSULTANT shall implement appropriate claims avoidance processes where in the best interests of CITY as determined by CITY's Project Manager.
- d. CONSULTANT shall assist CITY, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against CITY or the Project.

2.2.7 Safety

In addition to the requirements specified elsewhere in this Agreement, the following shall also apply:

- a. CONSULTANT shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for

CONSULTANT personnel. CONSULTANT shall provide CITY with monthly status of safety reports.

- b. CONSULTANT shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.
- c. CONSULTANT shall provide appropriate safety training for all CONSULTANT field personnel.
- d. CONSULTANT shall provide all necessary safety equipment as required for CONSULTANT personnel.

2.2.8 Construction Site Safety

In addition to the requirements specified elsewhere, the following also will apply.

- a. CONSULTANT will conform to the safety provisions of the Caltrans Construction Manual.
- b. CONSULTANT 's field personnel will wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and steel-toe leather boots with ankle support and rubber soled shoes at all times while working in the field.
- c. CONSULTANT will provide appropriate safety training for all CONSULTANT'S personnel, including work on and near highways.
- d. All safety equipment will be provided by CONSULTANT.

2.2.9 Project Closeout

- a. CONSULTANT shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
- b. CONSULTANT shall collect and furnish as-built information to the design engineer for preparation of as-built drawings including pre-stress drawings and pile logs, as applicable.
- c. CONSULTANT shall review and verify completeness of as-built drawings.
- d. CONSULTANT shall conduct a final walk-through with CITY, Local Agencies, Contractors, and design engineers.
- e. CONSULTANT shall prepare final construction reports including the Project Completion Report.
- f. CONSULTANT shall prepare and deliver to CITY all Project files.
- g. CONSULTANT shall assist CITY and Contractor in obtaining final release of all Project permits.
- h. Project closeout services will be completed within two months of project acceptance.

3. Construction QA Surveying

CONSULTANT shall perform quality assurance surveying services, field calculations, and home office calculations to support construction of the Project.

CONSULTANT may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction.

QA Survey services may include, but not be limited to the following types of surveys and related services:

- a) Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.
- b) Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.
- c) Survey data will include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.
- d) Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.
- e) Perform QA Surveying including, but not limited to:
 1. Establish control – ensure Contractor’s survey and QA survey utilizing same control.
 2. Survey edge of deck and 10 foot offset, every 10’, in order to draw 4-Scales for widening.
 3. Verify centerline of abutment/center line of bents/centerline of bridge.
 4. Verify top of bent walls for widening.
 5. Verify new edge of deck for screed setup.
 6. Verify roadway profile between tie-in with existing road and the bridge.
- f) Monitor for settlement, if required.

The CONSULTANT surveyor shall be licensed in the State of California and also have the ability to respond to survey requests within 48 hours after approval from the Resident Engineer.

4. Materials Testing/Source Inspection/Geotechnical Services

The number of field testing and source inspection personnel assigned to the Project will vary throughout the duration of the construction contract. CONSULTANT certified materials testing and source inspection personnel will be assigned as needed by the Resident/Bridge Engineer to meet the required numbers and frequencies of testing based on schedule of the construction contractor and per the City’s QAP.

Materials Testing/Source Inspection Services will be provided on an on-call basis. The duration of assignments could vary from a minimum of a few hours to the full term of the Project. CONSULTANT personnel will be available within one (1) day of written notification by CITY.

It is the intent of CITY to maintain a consistency of material testing/source inspection quality throughout each phase of each project. CONSULTANT is therefore encouraged to provide, where ever and whenever possible, the same personnel for the duration of construction of each project.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the CITY Project Manager.

CONSULTANT shall be responsible for finalizing a Source Inspection Quality Management Plan (SIQMP) to match the project requirements, assist CITY in gaining Caltrans approval, and manage the SIQMP. The SIQMP shall meet Caltrans requirements. Consultant shall provide Structural Materials Representative (SMR), Steel inspectors, Non-destructive Steel Inspectors, Coating Inspectors, Precast Concrete Inspectors and other source inspectors as needed.

CONSULTANT shall be responsible for meeting the requirements of the CITY's Quality Assurance Plan (QAP), as approved by Caltrans, and satisfy the Independent Quality Assurance (IQA) requirements.

All CONSULTANT personnel will be knowledgeable of, and comply with, all applicable local, state, and federal regulations. All personnel shall cooperate and consult with CITY during the course of the construction contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. CONSULTANT's personnel will keep records and document the work as directed by the Resident/Bridge Engineer.

CONSULTANT will furnish surveying crew(s) to perform quality assurance survey for the Project. The number of survey crew(s) assigned to the Project may vary throughout the duration of the construction contract to meet the Project needs.

CONSULTANT personnel will be available to meet the schedule of the construction contractor.

It is important that the Field Party Chief assigned to a project be completely familiar with the survey requirements and the assignments for the Project.

CONSULTANT personnel will:

1. Be knowledgeable of, and comply with all, applicable local, Caltrans, state, and federal regulations.
2. Cooperate and consult with CITY officials during the course of the Agreement.
3. Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications.
4. Keep records and document work as directed by CITY.

5. All services required herein will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

5. Deliverables

- 5.1 Inspector daily reports, extra work diaries and Resident Engineers ' daily diaries.
- 5.2 Monthly Project Summary Reports and SIQMP Monthly Reports.
- 5.3 Monthly update of all files to CITY hard drive.
- 5.4 Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
- 5.5 Contractor final payment documents, delivered to CITY no later than ten (10) working days after Acceptance by CITY of the completed construction Project.
- 5.6 Project Completion Report documents per Local Assistance Procedure Manual and Caltrans Construction Manual.
- 5.7 All Project files, Project reports, Record As-builts, correspondence, memoranda, shop drawings, Project logs, schedule updates, change order data, claims and claim reports, and Contractor payment records per Caltrans Construction Manual.
- 5.8 Certified payrolls and fringe benefit statements for all employees, CONSULTANT and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- 5.9 American for Disabilities Act certification of Project per Caltrans Standards.
- 5.10 All material test results will be provided in accordance with the applicable Standard Specifications and Special Provisions, and test methods. Failing tests will be immediately reported to the Resident Engineer or Structures Representative. All test results will be recorded on the appropriate forms. The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all test results and reports will be maintained by CONSULTANT throughout the duration of the Project and delivered to CITY with the Project files.
- 5.11 All original survey documents resulting from this Agreement, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of CITY. A copy of all survey documents furnished by CITY shall be retained by CONSULTANT for future reference.

6. Standards

All construction inspection, surveys, materials sampling and testing, and construction contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current Caltrans Manuals including:

- 6.1 Construction Manual and its revisions
- 6.2 Bridge Construction Records and Procedures Manual
- 6.3 Quality Assurance Program Manual
- 6.4 Manual of Traffic Controls for Construction and Maintenance Work Zones
- 6.5 Caltrans Standard Specifications and Standard Plans

- 6.6 Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual
- 6.7 Manual of Test (3 volumes)
- 6.8 Survey Manual
- 6.9 District 8 Standard Staking Procedures Manual

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

7. Method of Payment

All services to be performed by Consultant under any agreement awarded pursuant to this RFP, unless otherwise noted, will be paid on a Cost Plus Fixed Fee basis. Geotechnical investigation and material testing will be paid Cost per Unit work basis.

Please refer to Article V: Allowable Cost and Payments included in Exhibit of the Sample Consultant/Professional Service Agreement at the end of this RFP.

Cost-Plus-Fixed Fee: Consultant will be reimbursed for costs incurred and will receive an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from the agreement's costs. The fixed fee is not adjustable during the life of the agreement. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of **15 percent** of the total direct labor and indirect costs of the agreement may be justified only when exceptional circumstances exist. The Agreement's Cost Proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved by the City before they perform work under the Agreement or the costs can be questioned or disallowed. **(Please Refer to Exhibit 10-H, Example #1 included in Section F)**

Cost Per Unit of Work: Consultant will be paid based on each specific item of work performed. The Cost Proposal must specify what is included in the price to be paid for each item. Any item of work not identified in the Agreement's Cost Proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the Agreement before work is performed. **(Please Refer to Exhibit 10-H, Example #3 included in Section F)**

Section D – Technical Requirements and Qualifications

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. Again, all personnel and personnel assignments are subject to approval by CITY. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to the Project should have the following qualifications:

1. Project Manager

- 1.1 A minimum of six (6) years' project management experience on similar construction projects is desired.
- 1.2 Accessible to CITY at all times during normal working hours.
- 1.3 A thorough understanding of Caltrans construction practices and procedures.
- 1.4 A thorough understanding of Cal-OSHA practices and procedures.
- 1.5 The Project Manager will assume the following functional responsibilities:
 - a. Review, monitor, train, and provide general direction for CONSULTANT personnel.
 - b. Assign personnel to projects on an as-needed basis.
 - c. Administer personal leave.
 - d. Prepare monthly reports for delivery to CITY.

2 Resident/Bridge Engineer

- 2.1 A minimum of five (5) years' project management experience on similar construction projects is desired.
- 2.2 Experience performing dual role of Resident Engineer/Structural Representative desired.
- 2.3 Licensed Professional Civil Engineer in the State of California.
- 2.4 Knowledge of UPRR/BNSF construction practices desired.
- 2.5 Ability to work independently, make effective decisions concerning construction work in progress and solve field problems.
- 2.6 Local experience and knowledge of High Desert infrastructure challenges desired.
- 2.7 Accessible to the CITY at all times including weekends and holidays.
- 2.8 Certified as a Qualified SWPPP Developer or Practitioner desired.
- 2.9 Source inspection experience is desired.
- 2.10 A thorough understanding of Cal-OSHA practices and procedures.
- 2.11 A thorough understanding of Caltrans field methods, practices, and construction office procedures. The Resident Engineer will assume the following functional responsibilities:
 - a. Assign field personnel to specific project tasks.
 - b. Monitor and track Contractor progress.
 - c. Prepare daily, weekly and monthly reports as required.
 - d. Coordinate utility relocations with appropriate agencies and the utility inspector.

3 Assistant Resident Engineer

- 3.1 A minimum of four (4) years of experience on similar construction projects is desired.
- 3.2 Licensed Professional Civil Engineer in the State of California.
- 3.3 Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- 3.4 Accessible to CITY at all times including weekends and holidays.
- 3.5 Certified as a Qualified SWPPP Developer or Practitioner is desired.
- 3.6 A thorough understanding of Cal-OSHA practices and procedures.
- 3.7 Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Assistant Resident Engineer shall act under the direction of the Resident Engineer and will assume the following functional responsibilities:
 - a. Assign field personnel to specific project tasks.
 - b. Monitor and track Contractor progress.
 - c. Prepare daily, weekly and monthly reports as required.
 - d. Coordinate utility relocations with appropriate agencies.

4 Lead Field Inspector

- 4.1 A minimum of six (6) years' construction inspection experience in public works or similar projects.
- 4.2 A thorough understanding of Cal-OSHA practices and procedures.
- 4.3 Knowledge of Caltrans construction practices, physical characteristics and properties of highway construction materials, and approved methods and equipment used in making physical tests of construction materials.
- 4.4 Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- 4.5 Ability to direct the efforts of subordinate inspectors.
- 4.6 Ability to use an automatic level and transit for the purpose of verifying line and grade.
- 4.7 Understanding of Caltrans field and construction office procedures. The Lead Field Inspector will assume the following functional responsibilities:
 - a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of construction.
 - b. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - c. Coordinate field testing of materials to monitor compliance with Project specifications and City's Quality Assurance Program.
 - d. Maintain accurate and timely Project records. Perform quantity calculations for progress pay estimates.

- e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
- f. Provide input for the redesign of facilities to fit existing field conditions.
- g. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

5 Field Inspector

- 5.1 Two (2) years' construction inspection experience in public works or similar projects.
- 5.2 A thorough understanding of Cal-OSHA practices and procedures.
- 5.3 Knowledge of construction practices, physical characteristics and properties of construction materials, and approved methods and equipment used in making physical tests of construction materials.
- 5.4 Ability to work independently. Ability to make minor decisions concerning construction work in progress and to solve field and office problems.
- 5.5 Ability to use an automatic level and transit for the purpose of verifying line and grade.
- 5.6 Understanding of Caltrans construction methods and practices. The Field Inspector will assume the following functional responsibilities:
 - a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on **all** phases of project construction.
 - b. Assist in preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
 - c. Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
 - d. Perform quantity calculations for progress pay estimates and maintain Project records.
 - e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
 - f. Provide input for the redesign of facilities to fit existing field conditions.
 - g. Perform construction materials sampling.
 - h. Perform labor compliance interviews of the Contractors' personnel.

6 Structural Representative

- 6.1 A minimum of six (6) years of bridge or structural construction inspection as related to major public works projects and a four-year degree in civil engineering is desired.
- 6.2 Licensed Professional Civil Engineer in the State of California.
- 6.3 Knowledge of stress analysis, structural mechanics, and strength of materials.
- 6.4 A thorough understanding of Cal-OSHA practices and procedures.
- 6.5 Knowledge of Caltrans and BNSF construction practices and the physical characteristics and properties of various bridge construction materials including concrete.

- 6.6 Experience in the following areas: foundations, pile driving, concrete prestressing, bridge deck construction, cast-in-place wall construction, false work, and shoring.
- 6.7 Ability to work independently. Ability to perform duties in the construction field office and effectively make decisions concerning construction work in progress and solving field problems.
- 6.8 Ability to direct the efforts of subordinate inspectors.
- 6.9 Ability to use an automatic level and transit for the purpose of verifying line and grade.
- 6.10 Thorough understanding of Caltrans field methods, practices, and construction office procedures. The Structural Representative shall assume the following functional responsibilities:
 - a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundations, walls, false work, shoring, and drainage structures.
 - b. Make grade, alignment, quantity, false work, and shoring calculations.
 - c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project. Coordinate the sampling and testing of construction materials to monitor compliance with contract specifications.
 - d. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.
 - e. Coordinate with Resident Engineer, as well as the QA Construction Staking and Material Testing consultants.
 - f. Direct the daily activities of subordinate inspectors.

7 Structural Inspector

- 7.1 A minimum of four (4) years of bridge design or structural construction inspection as related to Caltrans or major public works projects.
- 7.2 Knowledge of stress analysis, structural mechanics, and strength of materials.
- 7.3 A thorough understanding of Cal-OSHA practices and procedures.
- 7.4 Knowledge of construction practices and the physical characteristics and properties of various highway bridge construction materials including concrete.
- 7.5 Experience in one or more of the following areas: pile driving, concrete prestressing, bridge deck construction, retaining wall construction, false work, and shoring.
- 7.6 Ability to work independently and make minor decisions concerning construction work in progress and to solve field and office problems.
- 7.7 Ability to use an automatic level and transit for the purpose of verifying line and grade.
- 7.8 Understanding of Caltrans construction methods and practices. The Structural Inspector will assume the following functional responsibilities:
 - a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural

construction such as bridges, foundation, walls, false work, shoring, and drainage structures.

- b. Make grade, alignment, quantity, false work, and shoring calculations.
- c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- d. Sampling and testing of construction materials to monitor compliance with contract specifications and Caltrans Quality Assurance Program.

8 Office Engineer

- 8.1 A minimum of two (2) years of experience as an office engineer on similar construction projects is desired.
- 8.2 Knowledge of Caltrans Office of Highway Construction forms used to administer construction projects.
- 8.3 Knowledge of Caltrans system of document organization.
- 8.4 Knowledge of construction records and accounting procedures.
- 8.5 Knowledge of documentation, procedures, and reporting for federally funded projects.
- 8.6 Knowledge of laws and regulations governing the payment of prevailing wages.
- 8.7 The Office Engineer will assume the following functional responsibilities:
 - a. Process monthly progress pay estimates, monthly status reports, extra work reports, and weekly statements of working days.
 - b. Prepare and process contract change orders.
 - c. Monitor construction budget and schedule.
 - d. Prepare, maintain, and/or file project documents including labor and equipment records, correspondence, memoranda, meeting minutes, claims, personnel records, labor compliance reports, and daily, weekly, and monthly reports.
 - e. Perform routine calculations and checking of quantities.
 - f. Coordinate all office activities and functions with CITY representatives.

9 Material Testing/Source Inspection Project Manager

- 9.1 A minimum four (4) years of project management experience on a similar highway/bridge construction project is desired.
- 9.2 Past experience delivery projects in the High Desert Region desirable.
- 9.3 Ability to use typical computer programs including word processing and spreadsheets.
- 9.4 The Materials Testing/Source Inspection Project Manager will assume the following functional responsibilities:
 - a. Review, monitor, train, and provide general direction for CONSULTANT'S laboratory, field and source inspection personnel.
 - b. Assign personnel to projects on an as-needed basis in coordination with the Resident Engineer.

- c. Administer personal leave, subject to approval of the Resident Engineer.
- d. Prepare weekly reports for delivery to the Resident Engineer.
- e. Provide direction, administration, and responsibility for Materials Certification per Caltrans Construction Manual, Section 8-01.
- f. Assist CITY and Resident Engineer in preparing the project specific Source Inspection Quality Management Plan (SIQMP) for Caltrans review and approval. (Reference Caltrans "Source Inspection Quality Management Plan (SIQMP Outline).
- g. Provide direction, administration, and responsibility for implementation of the approved SIQMP per Caltrans Construction Procedures Directive (CPD) 08-5 and FHWA Title 23 requirements.

Material testing/source inspection personnel will be certified by a California Registered Civil Engineer as being experienced and competent in the test procedures required for the work involved (and possess a current certificate of proficiency (Form MR-011 1) in accordance with Quality Assurance Program Manual (Section 3-5). Independent certification of Caltrans test procedures may be performed at the discretion of the CITY Project Manager.

Section E – Federal Contract Requirements

This contract is federally funded and will follow procedures and requirements as included in LAPM Chapter 10. If conflicting requirements are found within this RFP, Federal requirements take precedence. The standards referenced herein are crucial in maintaining federal eligibility.

Local Assistance Procedures Manual:

- Chapter 10
- Chapter 12
- Chapter 15
- Chapter 16
- Chapter 17

Caltrans Latest Edition of

- Standard Plans and Standard Specifications
- Construction Manual

The Federal Project Number (FPN) for this Project is BHLS-5380(026). The following are federal requirements for this solicitation.

1. Prevailing Wages

California State Prevailing Wages apply for services to be performed under this contract that involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth.

California State Prevailing Wage information is available through the California Department of Industrial Relations websites below: Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

DIR FAQ website:

http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html

DIR Wage Determination website:

<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

Caltrans Prevailing Wage Interpretive Guidance:

<https://ig.dot.ca.gov/resources/interpretive-guidance>

2. DBE

In compliance with Federal regulations (49 CFR, Part 26), the City has established a **5% DBE** goal for this contract. Please refer to Exhibit 10-I for the Notice to Proposers DBE information for guidance on contract requirements under this section. The following forms are included in this Section to be submitted with proposals as indicated in Exhibit 10-I and Section G of this proposal:

- Exhibit 15-H DBE Information – Good Faith Efforts
- Exhibit 10-O1: Consultant Proposal DBE Commitment
- Exhibit 10-O2: Contract Proposal DBE Commitment

3. Cost Proposal

The following Exhibits constitute the Cost Proposal and must be submitted in a separate sealed envelope (Please refer to Section F for Cost Proposal submittal requirements):

- Exhibit 10-H: Sample Cost Proposal (H1 through H-4). Please refer to Section D-7 for applicable Cost Proposal format.
Please note that although Exhibit 10H, as included in the LAPM Chapter 10 and in this section, includes forms H1-H4, this RFP requires consultant to use forms applicable to the method of payment depicted in Section C.7 in their cost proposal submittal. For personnel subject to California State Prevailing Wages as described in the California Labor Code, please refer to Exhibit 10-H4 included in this section.
- Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist
- Exhibit 10-K: Consultant Certification of Contract Costs & Financial Management System

4. Non-Discrimination Clauses and Statement of Compliance

The consultant must include article XVI, below, in all subcontracts to perform work under the contract.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious

creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by the City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the City shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

5. Certification and Conflict of interest Forms

The proposing Consultant shall disclose any financial, business or other relationship with the City of Victorville that may have an impact upon the outcome of the contract or the construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract or the construction project that will follow. The proposing Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction project. Consultant must include the following form with proposal.

- Exhibit 10-Q Disclosure of Lobbying Activities
- Disclosure of Potential Conflicts of Interest Form for A&E

- 6. Financial Management and Accounting System Requirements.** No agreement shall be awarded to a Consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. Selected consultants must have adequate financial management systems as required by the applicable federal regulations. Consultants must complete and submit the “Annual Certification of Indirect Costs and Financial Management System” (Exhibit 10-K) as part of its Cost Proposal.

EXHIBIT 8

Federal Exhibits

The following Exhibits can be found in fillable formats (word and excel) at the following link:

<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

DBE Forms

- Exhibit 10-I Notice to Proposers DBE Information
- Exhibit 15-H DBE Information – Good Faith Efforts
- Exhibit 10-O1: Consultant Proposal DBE Commitment
- Exhibit 10-O2: Contract Proposal DBE Commitment

Cost Proposal Forms

- Exhibit 10-H: Sample Cost Proposal (Forms H1-H4)
- Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist
- Exhibit 10-K: Consultant Certification of Contract Costs & Financial Management System

Certification and Conflict of interest Forms

- Exhibit 10-Q Disclosure of Lobbying Activities
- Disclosure of Potential Conflicts of Interest Form for A&E

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of 5 %

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1: Consultant Proposal DBE Commitment must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards **meeting** the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in **best qualified consultant's executed consultant contract**. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#).
 - 1. Click on the link titled "Access the DBE Query Form"
 - 2. Click on "Start DBE Firms Query" linkSearches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBEs COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date _____ PE/CE

Federal-aid Project No(s). _____ Bid Opening Date _____ CON

The _____ (Agency Name) _____ established a Disadvantaged Business Enterprise (DBE) goal of _____% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) **calendar** days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer’s or bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions, **please attach additional sheets as needed**:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to

demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
			0.00%	
				0.00%
				0.00%
				0.00%

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
<p>17. Local Agency Contract Number: _____</p> <p>18. Federal-Aid Project Number: _____</p> <p>19. Proposed Contract Execution Date: _____</p> <p>20. Consultant's Ranking after Evaluation: _____</p> <p>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.</p> <p>_____ 21. Local Agency Representative's</p> <p>_____ 22. Date</p> <p>_____ 23. Local Agency Representative's</p> <p>_____ 24. Phone</p> <p>_____ 25. Local Agency Representative's Title</p>			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____	14. TOTAL CLAIMED DBE PARTICIPATION		%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
23. Local Agency Representative's _____	24. Date _____	15. Preparer's Signature _____	16. Date _____
25. Local Agency Representative's _____	26. Phone _____	17. Preparer's _____	18. Phone _____
27. Local Agency Representative's Title _____		19. Preparer's Title _____	

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)*	_____	_____	\$ _____	\$ _____
(Sr. Civil Engineer)	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Inspector)**	_____	_____	\$ _____	\$ _____

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

b) Anticipated Salary Increases (see page 2 for calculation) \$ _____

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ _____

INDIRECT COSTS

d) Fringe Benefits (Rate: _____%) e) Total Fringe Benefits [(c) x (d)] \$ _____

f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ _____

FIXED FEE

k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee _____%** \$ _____

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) **TOTAL OTHER DIRECT COSTS** \$ _____

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: _____ \$ _____

Subconsultant 2: _____ \$ _____

Subconsultant 3: _____ \$ _____

Subconsultant 4: _____ \$ _____

m) **TOTAL SUBCONSULTANTS' COSTS** \$ _____

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$ _____

TOTAL COST [(c) + (j) + (k) + (n)] \$ _____

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	5000		\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$257,871.10	
Direct Labor Subtotal before Escalation				=	\$250,000.00	
Estimated total of Direct Labor Salary Increase				=	\$7,871.10	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant _____ Prime Consultant Subconsultant 2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount \$ _____ Date _____

For Combined Rate	Fringe Benefit % + General & Administrative %	=	Combined ICR%
OR			
For Home Office Rate	Fringe Benefit % + General & Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %	=	Field Office ICR%

Fee	=	%
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BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only
	Straight ³	OT(1.5x)	OT(2x)	From	To			
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Land Surveyor **	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00
Technician	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00

(Add pages as necessary)

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant _____ Prime Consultant Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$
Vehicle			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.

6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 7. Generally Accepted Accounting Principles (GAAP)
- 8. Terms and conditions of the contract
- 9. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 10. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 11. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 12. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

* An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2

COST PER UNIT OF WORK CONTRACTS
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

Unit/Item of Work:

(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)
Include as many Items as necessary.

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Classification)*	_____	_____	_____
Sub-professional/Technical**	_____	_____	_____
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

Consultant's Other Direct Costs (ODC) – Itemize:

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

TOTAL COST PER UNIT OF WORK \$ _____

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
2. Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
3. Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
4. ODC items shall be based on actual costs and supported by historical data and other documentation.
5. ODC items that would be considered "tools of the trade" are not reimbursable.
6. Billing Hourly Rates must be actual, allowable, and reasonable.

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

* An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

--

EXHIBIT 10-A
A&E CONSULTANT FINANCIAL DOCUMENT REVIEW REQUEST
Caltrans Division of Local Assistance
(Completed by Local Agencies, One per Contract)
(For New Proposed A&E Consultant Local Agency Contracts of \$150,000 or Greater)
(For Amendments, use only when there are additional subconsultants or changes in ICR)

EMAIL TO:

California State Department of Transportation
 Independent Office of Audits and Investigations
conformance.review@dot.ca.gov

Date: _____
Federal/State Project No.: _____

Attention: Audit Manager, External Contracts-Local Agencies

Please check one: New Contract Amendment Other _____

A&E Contract No.: _____

Total Contract or Amended amount of \$ _____

Prime Consultant Full Legal Name: _____

The Project Description is: _____

Complete below for Prime and all Sub-consultants on this contract.

Consultant's Name	Participation Amount	Category 1, 2, 3, 4, 5	Caltrans ICR Acceptance ID # (if available)

Note: Add pages if necessary.

I verify we received financial documents from the prime and sub-consultants based on the requirements specified in the Exhibit 10-A Checklist.

Name _____ **Signature** _____

Title _____

Name of Local Agency and Department: _____

Address: _____

Phone No.: _____

**CALTRANS A&I FINANCIAL DOCUMENT REVIEW REQUIREMENTS
FOR ARCHITECTURAL AND ENGINEERING (A&E) CONSULTANTS
ON LOCAL GOVERNMENT AGENCY CONTRACTS**

Requirements for total contract amount equal to or greater than \$150,000.

Local Government Agency must provide the following:

- 1) A&E Consultant Financial Document Review Request Letter (Exhibit 10-A) (a)
- 2) Local Agency and Prime Consultant's Points of Contact

**APPLICABLE ONLY IF NOT
CATEGORY 1, 2, or 3**

Prime and all sub-consultants must provide the following documents based on their applicable category.

Type of Financial Documents and Information for ICR FYE proposed *	CATEGORY 1: Firms with Cognizant Approval Letter for ICR FYE Proposed	CATEGORY 2: Firms with Caltrans Acceptance ID Number for ICR FYE Proposed **	CATEGORY 3: Firms Requesting Safe Harbor Rate (SHR)	CATEGORY 4: Consultant Participation Amount Less than \$150K	CATEGORY 5: Consultant Participation Amount Equal to or Greater than \$150K
Cost Proposals (Examples at Exhibit 10-H1 through 10-H4)	✓	✓	✓	✓	✓
Consultant Annual Certification of Indirect Costs and Financial Management System (Exhibit 10-K)	✓			✓	✓
Indirect Cost Rate (ICR) Schedule with FAR References for Disallowed Costs (b) Note: Prime Consultant must have a CPA Audited ICR Schedule for contracts equal to or greater than \$1M.	✓			✓	✓
Cognizant Approval Letter for the ICR FYE proposed	✓				
Caltrans' ICR Acceptance ID #s for ICR FYE proposed **		✓			
AASHTO Internal Control Questionnaire (ICQ) Appendix B (c)					✓
Post Closing Trial Balance (d)					✓
Prevailing Wage (PW) Policy for PW work (e)	✓	✓	✓ ***	✓	✓
Safe Harbor Rate Documents:					
Consultant Certification of Eligibility of Contract Costs and Financial Management System (Attachment 1R)			✓		
When applicable, additional documents may be requested:					
Prior Year ICR Schedule					
Supplemental Reconciliation Schedule (to tie the proposed ICR Schedule to the Trial Balance) (d)					
Chart of Accounts					
Income Statement (d)					
Uncompensated Overtime Adjustments (f)					
Vacation/Sick Policy					
Bonus Policy					
Executive Compensation Analysis (ECA) (d)					
Related Party Rent Analysis (d)					
Vehicle, Equipment, and Other Direct Costs Schedules (d)					

* ICR FYE = Indirect Cost Rate Fiscal Year End. Items on this checklist may not be all inclusive. A&I reserves the right to request additional documents as deemed necessary.

** Caltrans ICR Acceptance ID # is an identification number issued by Caltrans upon review and acceptance of consultant's indirect cost rate(s) schedule for a specific fiscal year. This ID # can be referenced for use on future contracts using the same FYE ICR.

*** Firms using SHR can be reimbursed for the prevailing wage deltas either as an Other Direct Cost or as an Overhead/Indirect Cost - refer to A&I's PW Interpretive Guidance on <http://ig.dot.ca.gov/resources/gentrainmod.html>

(a) *Local Agencies are required to complete Exhibit 10-A and include all applicable required documents upon submission.*

(b) *See Table 8-1 of the AASHTO Audit Guide for a listing of common unallowable costs.*

For financial document packages received between January 1, 2019 to June 30, 2019, the 2017 FYE ICR could be submitted if the FYE 2018 ICR is not available. For financial document packages received between

July 1, 2019 to December 31, 2019, the 2018 ICR must be submitted.

(c) *Go to AASHTO website @ audit.transportation.org, for Appendix B-Internal Control Questionnaire*

(d) *Accounts and balances must match costs proposed on the ICR schedule.*

(e) *Consultants performing Prevailing Wage (PW) work are required to provide written PW Policy. The policy must specify their accounting method for treatment of delta base and delta fringe. Refer to A&I's PW Interpretive Guidance on <http://ig.dot.ca.gov/resources/gentrainmod.html>*

**EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF
INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate _____ % **OR**

Home Office Rate _____ % and Field Office Rate (if applicable) _____ %

Facilities Capital Cost of Money _____ % (if applicable)

Fiscal period * _____

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\)](#); [48 CFR Part 31.201-2\(d\)](#); [23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount \$ _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____.
- Years of consultant’s experience with 48 CFR Part 31 is _____.
- Audit history of the consultant’s current and prior years (if applicable)
 - Cognizant ICR Audit Local Gov’t ICR Audit Caltrans ICR Audit
 - CPA ICR Audit Federal Gov’t ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: _____ Title**: _____

Signature: _____ Date of Certification (mm/dd/yyyy): _____

Email**: _____ Phone Number**: _____

**An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency’s invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.***

- Distribution:**
- 1) Original - Local Agency Project File
 - 2) Copy - Consultant
 - 3) Copy - Caltrans Audits and Investigations

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

**DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM
FOR A&E CONTRACTS**

The Proposer must identify and describe in detail each conflict of interest, if applicable.

Use at least one form for each firm and attach additional documentation as necessary.

- I. Describe in detail the nature of the actual or potential conflict(s) (involving project, personnel, financial advantage, or other item):
 - a) project,
 - b) personnel,
 - c) financial advantage, or
 - d) other item

- II. For **each** actual or potential conflict above, describe in detail the **measures proposed to mitigate**:

- III. Describe in detail the intended effect of the proposed measures on the actual or potential conflict(s) and how the proposed measures will mitigate the actual or potential conflict(s):

Signature _____ Date _____

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with Department of Transportation contract personnel.

Name & Title _____ Phone _____

Solicitation # _____ Firm Name _____

Section F – Proposal Submittal Format

1. **Proposal Submittal:** Proposal should be typed, organized and concise, yet comprehensive. Consultant shall limit proposals to a total of 100 typed pages which includes items 1 thru 11 under the “Proposal Format and Required Contents”.

Consultants shall include one (1) bound original and one (1) electronic copy of their proposal (pdf format on a flash drive) in a sealed package **plainly marked** and submitted as follows:

SEALED PROPOSAL FOR CONSTRUCTABILITY REVIEW AND CONSTRUCTION MANAGEMENT SERVICES FOR THE BEAR VALLEY ROAD OVERHEAD AT BNSF RAILROAD, BM21–034 DO NOT OPEN WITH REGULAR MAIL
Attention: Bruce Miller – Finance Division
City of Victorville
14343 Civic Drive, 2nd Floor
Victorville, CA 92392

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. **Any proposal found to be illegible or incomplete shall be considered for rejection.** Whether sent by courier, mail, or by means of personal delivery, Proposers assume full responsibility for having their proposal deposited at the proper address and not later than the scheduled closing time. **Faxed or emailed** proposals or modifications will **not** be considered. More than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names, will not be considered.

Cost proposals must be included in the same package but on a separate sealed envelope. Please see section F-3 for Cost Proposal submission requirements. **Consultants must not include electronic copies of the cost proposal in the flash drive provided as part of the proposal package submittal.**

2. **Proposal format and required contents:**
 1. Project Cover Sheet
 2. Table of Contents
 3. Cover letter: Cover letter shall designate who will be the principal in charge of the project, and who will be the City’s contact throughout the life of the project. Proposals shall be signed by an officer authorized to bind the consultant and shall contain a statement to the effect that the proposal constitutes a firm offer for at least ninety (90) days from the last day for receipt of proposals set forth herein.
 4. Project Understanding: The proposal shall contain a detailed explanation of the project. Do not reiterate the contents of the RFP.
 5. Organization chart: Consultant shall include an organization chart with all proposed staff and sub-consultants.
 6. Schedule and deadlines: Consultant shall provide a detailed Critical Path Method schedule for the services to be provided. The City has included a construction

schedule in Section B-8 as well as a schedule for the procurement of this contract in Section G-1. Consultant shall refer to these schedules as the basis for the CPM schedule required under this section. Consultant shall list all assumptions.

7. Work Plan: Consultant shall include their plan to provide the services as specified in this request for proposal. The Consultant must identify any challenges that might affect the schedule, the quality of work or the cost of the construction and provide preventive measures, solutions and/or innovative approaches to optimize the processes and meet or exceed desirable outcomes.

If Consultant believes that any portion of City's plan as presented in this RFP are not attainable, Consultant must identify deficiencies and facts and provide their best proposal. Consideration as to how the Consultant plans to maintain the construction of the Project eligible for federal reimbursement must be included in this section.

8. Staffing Plan including Sub-consultants: Describe current and anticipated workload of each team member; include a discussion of project commitments made to other agencies and a table showing the percentage of time key staff members are available during the course of the project.
9. Staff resumes: Resumes should not be more than two (2) pages for key team members and one page or less for support staff. Provide a brief summary of the qualifications and experience of each team member assigned, including length of service with the firm and the qualifications/experience of any subconsultant staff on your project team.
10. Relevant Firm's Qualifications/Experience: List your organization's specific experience in relevant areas such as federally funded bridge projects of similar magnitude and scope of work. Project must have been completed in the past five (5) years. Consultant must provide any other information that might aid in the City's selection committee review process, as related to the consultant's qualifications.
11. Required Forms: The following are a list of the forms that the consultant must include with their proposals. Federal forms are included at the end of Section E as Exhibit 8. All other forms are included at the end of this section a Exhibit 9.

City Forms (See Exhibit 9)

- Submission Certification
- Proposer Identification
- Worker's Compensation Certification
- Non-Collusion Declaration
- Debarment and Suspension Certification
- Exceptions Forms
- Customer References

Federal Forms (See Section E)

- Exhibit 10-O1: Consultant Proposal DBE Commitment
- Exhibit 15-H DBE Information – Good Faith Efforts
- Exhibit 10-Q Disclosure of Lobbying Activities
- Disclosure of Potential Conflicts of Interest Form for A&E

3. Cost Proposal:

Consultants must include two (2) separate Cost Proposal packages one for each contract to be awarded from this solicitation. Each one of this Cost Proposal packages will have to be sealed and clearly labeled. No electronic submissions of the Cost Proposal must be included.

Cost Proposal for Constructability Review

Please refer to Section C.1 of this RFP for scope of work to be included as the cost basis for this cost proposal package.

One hard copy of the Cost Proposal package must be submitted in a separate sealed envelope titled “Cost Proposal – Constructability Review”.

Although this portion of the contract will not be federalized, we require the consultant to follow same cost proposal requirements as the federalized portion of work.

As indicated in Section E-3, the following forms, and all supporting documentation, constitute a Cost Proposal package:

- Exhibit 10-H: Sample Cost Proposal
- Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist
- Exhibit 10-K: Consultant Certification of Contract Costs & Financial Management System

The prime consultant must include a separate cost proposal for each subconsultant and each subconsultant’s cost proposal must follow the same format as the prime consultant’s cost proposal. In addition, consultant must submit a summary cost proposal for the whole constructability review contract.

Cost Proposal for Construction Management Services/QA Surveying/Material Testing/Source Inspection/Geotechnical Services

Please refer to Sections C.2 – C.4 of this RFP for scope of work to be included as the cost basis for this cost proposal package.

One hard copy of the Cost Proposal package must be submitted in a separate sealed envelope titled “Cost Proposal – CM Services”.

As indicated in Section E-3, the following forms, and all supporting documentation, constitute a Cost Proposal package:

- Exhibit 10-H: Sample Cost Proposal
- Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist
- Exhibit 10-K: Consultant Certification of Contract Costs & Financial Management System

The prime consultant must include a separate cost proposal for each subconsultant and each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal. In addition, consultant must submit a summary cost proposal for the total contract under this section.

EXHIBIT 9

Section F - City Required Forms

- Submission Certification
- Proposer Identification
- Worker's Compensation Certification
- Non-Collusion Declaration
- Debarment and Suspension Certification
- Exceptions Forms
- Customer References

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overhead at BNSF Railroad
PROJECT BM21-034
SUBMISSION CERTIFICATION**

I hereby submit to the City of Victorville the following proposal for work outlined in the solicitation document entitled “**Request for Proposal for Constructability Review and Construction Management Services for the Bear Valley Road Overhead at BNSF Railroad, BM21-034**”. All of the following sections/documents (check below) are completed, fully executed, and included in my proposal as required in the request for proposal:

- Project Cover Sheet
- Table of Contents
- Cover letter
- Project Understanding
- Organization chart
- Schedule and deadlines
- Work Plan
- Staffing Plan including Sub-consultants
- Staff resumes
- Relevant Firm’s Qualifications/Experience
- Required Forms (To Be Submitted with Proposal)
 - Submission Certification
 - Proposer Identification
 - Worker’s Compensation Certification
 - Non-Collusion Declaration
 - Debarment and Suspension Certification
 - Exceptions Forms
 - Customer References
 - Acknowledgement of Addenda
 - Exhibit 10-O1: Consultant Proposal DBE Commitment
 - Exhibit 15-H DBE Information – Good Faith Efforts
 - Exhibit 10-Q Disclosure of Lobbying Activities

_____ Cost Proposal

_____ Exhibit 10-H: Cost Proposal

_____ Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist

_____ Exhibit 10-K: Consultant Certification of Contract Costs & Financial
Management System

My signature on this Submittal Certification is affirmation that all items listed above are fully completed and executed and are hereby submitted with the proposal as required. I understand that failure to complete and/or submit any of the required documents may be cause for rejection of my bid proposal.

Furthermore, Proposer hereby acknowledges receipt of Addenda No. _____ through _____.

Authorized Signature

Printed Name and Title

Date Signed

Telephone Number

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overheat at BNSF Railroad
Project BM21-034**

PROPOSER IDENTIFICATION

1. Legal name of Proposer: _____
2. Street Address: _____
3. Mailing Address: _____
4. Business Telephone: _____
5. Facsimile Telephone: _____
6. Email Address: _____
7. Type of Business:
 Sole Proprietor Partnership Corporation
Other: _____
If corporation, indicate State where incorporated: _____
8. Business License number issued by the City where the Proposer's principal place of business is located.
Number: _____ Issuing City: _____
9. Federal Tax Identification Number: _____
10. Proposer's Project Manager: _____
11. Date of inception or incorporation: _____

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overheat at BNSF Railroad
Project BM21-034**

WORKERS' COMPENSATION CERTIFICATE

The Proposer shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of SECTION 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and on behalf of my firm, I will comply with such provisions before commencing the performance of the services of any contract entered into.

_____ Signature	_____ Company Name
_____ Printed Name	_____ License Number
_____ Title	_____ Date

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overheat at BNSF Railroad
Project BM21-034**

DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal or state agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal or state agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
 5. If there are any exceptions to this certification, insert the exceptions in the following space.

- B. Any exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal.

Proposer's Signature

Name

Title

Company Name

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overheat at BNSF Railroad
Project BM21-034**

EXCEPTIONS FORM

Should Proposer take exception to **ANY** of the terms and conditions or other contents provided in the "Request for Proposal," list the exceptions below. **THIS COMPLETED FORM MUST BE RETURNED WITH YOUR PROPOSAL.** If no exception(s) are taken, enter "***NONE***" for the first item. *(Make additional copies of this form as necessary)*

Page Number: _____ Section Title: _____

Paragraph Number: _____ Exception Taken: _____

Page Number: _____ Section Title: _____

Paragraph Number: _____ Exception Taken: _____

Page Number: _____ Section Title: _____

Paragraph Number: _____ Exception Taken: _____

**Request for Proposals for Constructability Review and
Construction Management Services for the Bear Valley Road Overheat at BNSF Railroad
Project BM21-034**

CUSTOMER REFERENCES

Proposer: _____

LIST THREE AGENCIES YOU HAVE DONE BUSINESS WITH WITHIN THE LAST FIVE YEARS	
1.	Name of Agency:
	Address:
	Contact Person Name:
	Contact Person Phone:
	Contact Person Fax #:
	Contact Person Email:
	Relevant Experience:
2.	Name of Agency:
	Address:
	Contact Person Name:
	Contact Person Phone:
	Contact Person Fax #:
	Contact Person Email:
	Relevant Experience:
3.	Name of Agency:
	Address:
	Contact Person Name:
	Contact Person Phone:
	Contact Person Fax #:
	Contact Person Email:
	Relevant Experience:

Acknowledgement of Addenda

Proposer hereby acknowledges receipt of all Addenda through and including:

Addendum No. _____, dated _____.

Consultant Company: _____

Authorize Signature: _____

Print Name: _____

Date: _____

Section G – Procurement Process

1. Tentative Schedule

The following is a tentative schedule for the procurement of a consultant contract for constructability review and construction management services.

	Task	Estimated Completion Date
1	Issue Request for Proposals	9/24/2020
2	Non-Mandatory Pre-proposal Meeting	10/06/2020
3	Last Day for Questions	10/09/2020
4	Proposals Due	10/22/2020
5	Proposal Evaluation	11/12/2020
6	Conduct Interviews with shortlisted firms	11/23 – 11/24
7	Consultant Selection	12/01/2020
8	Contract Negotiations	12/10/2020
9	Submit (10-A Package) to CALTRANS IOAI	12/11/2020
10	Award Constructability Review Contract	12/15/2020
11	NTP for Constructability Review	01/05/2021
12	IOAI Issues cognizant letter of approval	01/22/2021
13	Analyze findings of review letter & address findings and incorporate in final contract & cost proposal	02/4/2021
14	Submit Agenda Item for Council Award for CM Services	02/18/2021
15	Council Approves CM Contract Award	03/02/2021
16	End of Constructability Review/ Ready to bid PS&E	03/04/2021
17	Issue NTP on CM Contract	03/16/2021
18	Advertise for Construction	03/22/2021

2. **Non-Mandatory pre-proposal meeting:** The City will held a virtual non-mandatory pre-proposal meeting **on Tuesday, October 6, 2020** at 2:30 P.M. PST. **Meeting link will be sent to all registered proposal holders by October 2nd, 2020.**

3. Proposal evaluation criteria

The City has formed a review committee to rank proposals and select the firm(s) most qualified to provide the requested services. City may contact the firm(s) for additional information or clarification. All proposals will be evaluated and ranked by the review committee according to the following criteria and point system:

CRITERIA	MAXIMUM POINTS	RANKING
<p>1. Qualifications, Related Experience, and References: Proposer’s experience, years in business, and past and current client references; technical expertise and professional competence in areas directly related to this REF, number of year’s experience performing similar work; demonstrated ability to manage and coordinate the Work; deliver quality prodducts and services; deliver projects within budget and on schedule; and experience working with public agencies identified in the RFP.</p>	30	
<p>2. Proposed Staffing and Project Organization: Technical expertise and professional competence in areas directly related to the work identified in this RPF. Level of experience; knowledge of state and federal guidelines and requirements; certifications and licenses required and training of key personnel assigned, including sub-consultants, if applicable; strength of experience and stability of proposed personnel; breadth and depth of resources; coordination of Work and quality control; availability of proposed staffing; and concurrence with restrictions on changes in key personnel.</p>	30	
<p>3. Work Plan: Depth of understanding of the City’s needs and requirements, and understanding of the Scope of Work; proposer’s approach and methodology/systems reflecting the ability to provide the requested Work; demonstrated knowledge of the Work being requested; identification and knowledge of all requirements cited in the Scope of Work; and proposed technical or procedural innovations identified in the proposal. Optimized methods/processes to reduce construction duration and/or attain project goals.</p>	40	
Total	100	

4. Interview

The City shall select the highest ranked proposers to participate in a virtual interview process. The number of proposers so invited shall be at the discretion of the City but shall not be less than three Proposers.

At the interview, the Proposers will be asked a series of questions which will be scored based on the same criteria as the one shown above.

Final ranking will be made based on the combined (sum of) proposal and interview rankings. The top ranked consultant will be that who has the lowest total ranking scores. Raw scores will only be considered to develop final ranking of each selection phase (proposal & interview).

5. **Contract negotiations**

After ranking, the City cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the City does not consider fair and reasonable, negotiations must be formally terminated and the City must then undertake negotiations with the second most qualified consultant. If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the City must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the City. However, the City may elect at any time to not negotiate any further and not award the contract.

Upon completion of contract negotiations, the City will :

1. Award a constructability review contract, and
2. Forward cost proposal package and all supporting documentation to Caltrans Independent Office of Audits and Investigations (“IOAI”) for review and evaluation.

The IOAI is afforded 30 business days to respond to requests from the date submission is received, with the assumption IOAI received all the required documents. The required documents are based on the consultant’s category type. Please refer to Exhibit 10-A for additional information. Also, Chapter 10 of the LAPM section 10.1.3 contains more detailed guidance regarding audit and review process.

Once IOAI issues a cognizant letter of approval, the City and consultant would analyze findings of review letter and address finding and incorporate in final contract and cost proposal. The City Engineer would then recommend the project for award at the next City Council meeting.

6. **Proposal Acceptance:** The City reserves the right to accept or reject any and all proposals and waive any irregularities or informalities in any proposals or in the proposal process. The City further reserves the right to award the contract to other than the ranked number one (1) Proposer if such action is deemed to be in the best interest of City.

The award of the contract, if awarded, will be made as described in previous Sections of this RFP within ninety (90) working days after opening of the proposals. The consultant’s signature on the proposal shall constitute a commitment on the part of that consultant to furnish the service as set forth in the proposal.

7. **Waiting Period:** Proposals shall be firm offers, subject to acceptance or rejection for a period of up to ninety (90) days from the date of the proposal opening until proceedings are completed and an award is made. Proposer shall assume full responsibility for the effect of the waiting period on all proposal fees and terms.
8. **Proposal Preparation Costs:** The City is not, nor shall be, deemed liable for any costs incurred by Proposer in the preparation, submittal, or presentation of their proposals.
9. **Proposal Inclusions:** The proposal must be submitted as specified in Section F, with ALL applicable portions fully completed by the Proposer. All Proposers are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting as outlined elsewhere in this document.
10. **Withdrawal of Proposal Before Closing:** Any Proposer may request the withdrawal of their submitted proposal, by written request, at any time prior to the scheduled closing date and time. Upon receiving the written request to withdraw any proposal, the City will consider the Proposer's proposal null and void, and return the proposal to the Proposer unopened. Withdrawal of Proposer's proposal will not prejudice Proposer's resubmittal for this or any future proposal(s).
11. **Mistake in Proposal:**

Any Proposer may withdraw their proposal after the proposal opening, subject to the time restrictions indicated below, only if the Proposer can establish to the City's satisfaction, that a mistake was made in preparing the proposal.

 - 11.1 A Proposer declaring a mistake must provide a written notice to the City within five (5) calendar days following the scheduled closing date, specifying in detail, how the mistake occurred, and how the mistake made the proposal materially different than it was intended.
 - 11.2 Withdrawal of the proposal will only be permitted for mistakes made in the completion of the proposal. A Proposer who claims a mistake shall be **prohibited** from submitting further proposals on the Project on which the mistake was claimed.
12. **Term of Contract:** The term of the Agreement shall be in accordance with the "Term of Agreement" section in the Agreement. It is anticipated that the term of the agreement for the Construction Management portion of work will be three-years. It is anticipated that the term of the agreement for the Constructability Review will be six months.
13. **Interpretation of Documents:** During the proposal solicitation period, should a Proposer find discrepancies or omissions in any part of the "Request for Proposal," or should the Proposer be in doubt as to their interpretation, the Proposer shall immediately notify the contact indicated in Section A, above. Should it be found necessary, an addendum will be sent to all Proposers. Any addenda issued prior to the scheduled

proposal closing date and time, shall form a part of this solicitation and shall become a part of the submitted proposal.

Exceptions to this Request for Proposals: Any changes from the provisions of this Request for Proposals, which may be desired by the Proposer, shall be specifically noted on the form provided in this section.

14 **Public Record:** Be advised that **all** information contained in proposals submitted in response to this solicitation **shall** become a matter of public record upon contract award, and be made available upon request, unless otherwise marked. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Proposer claims are exempt from disclosure pursuant to the California Public Records Act. The proposer who claims such an exemption must also state in the proposal that, "The Proposer agrees to indemnify and hold harmless the City and its officers, employees and agents from any claims, liability or damages against the city and to defend any actions brought against the City for its refusal to disclose such material, trade secrets or other proprietary information to any party."

15 **Contract Extension:** The successful proposer shall execute a contract (Consultant/Professional Services Provider Agreement) with the City for the services to be provided. A sample Agreement is provided as Exhibit 10 the end of this RFP. Please refer to Exhibit 10 for contract extension.

Section H: Supplemental Required Contract Terms and Conditions

1. **Availability and Work Hours:** The typical workday includes all hours worked by CITY's construction Contractor including nights and weekends. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for CONSULTANT's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT services will not be provided unless authorized by the CITY Project Manager.

Unless otherwise directed by CITY, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by CITY.

2. **Care and Custody:** The Consultant accepts full responsibility for the security against loss or damage to the articles involved while in his possession or the possession of any of his agents. Consultant shall reimburse the City for any loss or damage to City articles in his or his agents care or custody.
3. **Third Party Relationships** This Contract is intended to provide unique services for a specific project. In the development of the Project, CITY has worked closely with various professional consultants, agencies, and others in the preparation of the construction documents and other Project related materials. CITY, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. CONSULTANT shall take direction **only** from CITY and shall regularly inform **only** CITY of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, CONSULTANT may find occasion to meet with Caltrans, City or County representatives, the design engineer, Project consultants, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While CITY enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from CITY. All oral and written communication with outside agencies or consultants related to the Project shall be directed only to CITY. Distribution of Project related communication and information shall be at the sole discretion of CITY representatives.

4. **Limitations to Authority:** CONSULTANT does not have the authority to:
 - b. Authorize deviations from the construction contract documents.
 - c. Approve substitute materials or equipment; except as authorized in writing by CITY.
 - d. Conduct or participate in tests or third party inspections; except as authorized in writing by CITY.
 - e. Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors.
 - f. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions
 - g. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.
 - h. Verbally authorize or approve change orders or extra work for the Project.
 - i. Offer or receive incentives, inducements, or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

5. **Federal, State and Local Laws:** The Consultant and all subconsultants shall comply with all applicable federal, state, and local laws, rules, and regulations.

6. **Retention of and Access to Records:** At all reasonable times during the term of this contract and for a minimum of three years following final settlement, City, and any designated representative shall have access to all records related to work performed under this contract and the Consultant and all subcontractors shall make such records available for inspection, audit, copying excerpts and transcriptions.

7. **American with Disabilities:** The Consultant and all subconsultants shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 1201 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

8. **Prohibited Interest:** No member, officer, or employee of the City of Victorville engaged in the selection, award, or administration of this Contract shall have any prohibited conflict of interest, whether real or apparent, in this Contract or the proceeds thereof.

Furthermore, the parties hereto covenant and agree that to their knowledge no member, officer, or employee of the City has any interest, whether contractual, non-contractual, financial, or otherwise, in this transaction or in the business of the contracting party other than the City, and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of such information will be made, in writing, to the other party or parties; even if such interest would not be considered conflict of interest under Article 4 (commencing with Section 1090) or

Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code of the State of California.

- 10 **Drug-Free Workplace Requirements:** The Consultant and all subconsultants shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 et seq.).

EXHIBIT 10
SAMPLE AGREEMENT

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT
BY AND BETWEEN
THE CITY OF VICTORVILLE
AND
CONSULTANT COMPANY NAME
FOR
PROJECT TITLE AND NUMBER**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and [CONSULTANT], [STATE FORM OF BUSINESS], hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS, the City requires Consultant/Professional Services Provider Agreement for **PROJECT TITLE AND PROJECT # (the "Project"); and**

WHEREAS, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

WHEREAS, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, **PROJECT TITLE and**

WHEREAS, the services and work to be provided under this Agreement are being paid for, in whole or in part, with Federal funds and the provisions required for all Federally-funded contracts are listed in Exhibit "B" of this Agreement as "Additional Contract Terms".

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS(CHANGE AS APPLICABLE)

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

Section 2. PROPOSAL; STATEMENT OF WORK

Consultant shall provide to the City those services set forth in the **Proposal (hereinafter the "Statement of Work")**, attached hereto as **Exhibit "A"**, and incorporated as part of this Agreement by this reference.

Section 3. **ADDITIONAL CONTRACT TERMS**

The Additional Contract Terms set forth in Exhibit “B” attached hereto and incorporated as part of this Agreement by this reference, are required in all federally-funded contracts and shall be followed as to any compensation or reimbursement related to this Agreement. In the event of any conflict between the provisions of Exhibit “B” and Section 4.b of this Agreement, the provisions of Section “B” shall prevail.

Section 4. **COMPENSATION (change as applicable)**

Subject to the provisions of Exhibit “B” and the final approved Cost Proposal attached hereto as Exhibit “C” and incorporated as part of this Agreement by this reference (hereinafter the “Cost Proposal”), the City shall pay Consultant a sum not to exceed **SPELL OUT AMOUNT and 00/100 Dollars (\$0000000)** for faithful performance of the services outlined in the Statement of Work in Exhibit “A”. The provisions of Exhibits “A”, “B”, and “C” notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as specified in subsection 4.b, below. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant’s invoice. (remove if federally funded)

b. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit “A”; (ii) appear on Consultant’s monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same. (remove if federally funded only)

Section 5. **ORDER OF PRECEDENCE**

This Agreement consists of the following component documents (the “Agreement Components”), all of which are made part of this Agreement and are listed in order of precedence below. If there is a conflict between the Agreement Components, the document highest in precedence in the list below controls, except that in the event of a discrepancy between any documents prepared by the Consultant (including without limitation, the Statement of Work submitted to the City by Consultant and attached hereto as Exhibit “A”), and those prepared by the City, the City-prepared documents take precedence over and shall control with respect to the resolution of the discrepancy, and nothing set forth in Exhibit “A” shall be deemed to supersede any of the provisions of this Agreement:

1. Written Amendments to this Agreement executed by both Parties;
2. This Agreement, and all attached Exhibits and supplemental terms incorporated herein by reference, subject to the limitations on Exhibit “A” specified in the preceding paragraph and in Section 31 of this Agreement, entitled “Ambiguities”;
3. Addenda to the RFP for Project BM21-034
4. RFP for Project BM21-034, dated September 24, 2020

Section 6. TERM OF AGREEMENT

a. This Agreement shall go into effect on (_____), contingent upon approval by City as set forth in Section 47 of this Agreement, and shall end on (_____) the "Termination Date", unless terminated earlier pursuant to Sections 21 or 43 of this Agreement, or extended by Agreement amendment. Consultant shall commence work only after notification to proceed is provided by the City's Contract Administrator.

b. Consultant is advised that any recommendation for Agreement award is not binding on City until this Agreement is fully executed and approved by City in accordance with Section 47 hereof. (The following must be deleted if federally funded)This Agreement shall be for an Initial Term of **[NUMBER of MONTHS]**, commencing on **(COMMENCEMENT DATE)** (the "Commencement Date") and expiring on **(TERMINATION DATE)** (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.)

[IF NO OPTION PERIODS -- DELETE THIS SECTION FROM THE AGREEMENT IN IT'S ENTIRETY]-- This Agreement may be extended for **ONE (1)** additional one-year period (hereinafter "Option Period"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Consultant sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Consultant such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Consultant. (deleted if federally funded)

Section 7. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this agreement.

**Section 8. REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING INDEPENDENT CONTRACTOR'S STATUS OF
CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Statement of Work **set forth in Exhibit "A", the "Additional Contract Terms set forth in Exhibit "B",** and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. NOT AGENT OF THE CITY

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 10. LICENSES AND PERMITS

Consultant represents that it has obtained and will maintain at all times during the term of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement. Consultant shall also require all subconsultants to obtain and maintain such licenses while performing any work under this Agreement.

Section 11. STANDARD OF PERFORMANCE; WARRANTY

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to **(DEPARTMENT HEAD AND TITLE), or** his designee.

b. By executing this Agreement, Consultant warrants that it:

(1) Has thoroughly investigated and considered the services and work to be performed;

(2) Has investigated the issues regarding the scope of work and services to be provided;

(3) Has carefully considered how the services and related work should be performed; and

(4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

Section 12. FAMILIARITY WITH WORK

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from **(DEPARTMENT HEAD AND TITLE), or** his designee.

Section 13. CONFLICTS OF INTEREST

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest shall be employed by it. In the event the City determines that Consultant must disclose its financial

interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

Section 14. COMPLIANCE WITH LAWS

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members. Consultant agrees to and shall comply with the provisions set forth in RFP Section H - Supplemental Required Contract Terms and Conditions, which provisions are hereby incorporated by this reference as if set forth fully herein and made part of this Agreement.

Section 15. COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE

a. Consultant shall procure and maintain at its own expense, during the term of this Agreement (and during any extension thereof), Commercial General Liability Insurance, of not less than \$ 1,000,000 per Occurrence / \$2,000,000 in the Aggregate and \$5,000,000 Umbrella Liability Occurrence/Aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during term of this Agreement (and during any extension thereof), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

Section 16. WORKERS' COMPENSATION INSURANCE

a. Consultant shall procure and maintain at its own expense, during the term of this Agreement (and during any extension thereof), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

Section 17. PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$2,000,000 per claim and in the aggregate must be provided.

Section 18. ADDITIONAL INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

Section 19. WAIVER OF SUBROGATION RIGHTS

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 20. PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS

a. Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b. The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the term (and during any extension thereof) of this Agreement.

e. The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

Section 21. TERMINATION OR SUSPENSION

a. This Agreement may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

b. City may temporarily suspend this Agreement, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination.

c. Notwithstanding any provisions of this Agreement, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

d. In the event of termination, City shall only be liable for payment under the compensation provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

Section 22. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 23. INDEMNIFICATION

a. Except as set forth in Subsection b of this Section 23, and to the fullest extent permitted by law, Consultant shall immediately defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents (the "City Indemnitees"), from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and reasonable attorneys' fees, for any personal injuries, deaths, or property damage, including property owned by the City (collectively "Claims") which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such Claims are proven to be caused by the negligence or willful misconduct of the City Indemnitees.

b. The provisions of this Subsection b apply only in the event that Consultant is a design professional within the meaning of California Civil Code section 2782.8 ("Design Professional"). The term Design Professional, as defined in said section, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(1) Notwithstanding the provisions of Subsection a above, to the extent that the services to be provided under this Agreement are those of a Design Professional, Consultant's duty to indemnify, hold harmless, and defend the City Indemnitees shall be limited to the extent that any Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, employees or subconsultants in the performance of the services described in this Agreement.

(2) In no event shall the costs of defense charged to Consultant exceed the Consultant's proportionate percentage of fault, except as otherwise set forth in said Civil Code section 2782.8, the provisions of which are incorporated into this Agreement by this reference. Nothing in this Subsection b shall be construed to require Consultant to provide indemnification for Claims caused by the active negligence or willful misconduct of the City Indemnitees.

c. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section 23 shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

d. The obligation to indemnify and defend, as set forth in this Section 23, is binding on the successors, assigns, or heirs of Consultant and shall survive the expiration or any early termination of this Agreement.

Section 24. REPORTS

Upon request by **(DEPARTMENT HEAD AND TITLE)**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Statement of Work set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

Section 25. RECORDS

a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **(DEPARTMENT HEAD AND TITLE)**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **(DEPARTMENT HEAD AND TITLE)**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **(DEPARTMENT HEAD AND TITLE)**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 26. HIRING UNDOCUMENTED IMMIGRANTS PROHIBITED

Consultant shall not hire or employ any person to perform work within the City or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

Section 27. CONFIDENTIALITY AND OWNERSHIP OF WORK

a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.

b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of **(DEPARTMENT HEAD AND TITLE)**, or his designee, or as required by applicable law.

c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **(DEPARTMENT HEAD AND TITLE)**, or his designee, or as required by applicable law.

d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **(DEPARTMENT HEAD AND TITLE)**, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.

e. Consultant's covenants under this Section 27 shall survive the termination of this Agreement.

Section 28. PRINCIPAL REPRESENTATIVES

a. **[SERVICE REPRESENTATIVE]**, is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **(DEPARTMENT HEAD AND TITLE)**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

Section 29. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both Parties. Any modifications or changes to the services to be provided shall be within the originally-advertised scope of work for **PROJECT TITLE**.

b. During the term of this Agreement or any extension thereof, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **PROJECT TITLE**, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.(remove if federally funded)

Section 30. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 34. REVIEW BY ATTORNEYS

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

Section 35. WAIVER

a. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

Section 36. ASSIGNMENT

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

Section 37. CARE OF WORK

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

Section 38. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 39. SUCCESSORS, HEIRS, AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

Section 40. GENDER

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 41. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 42. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 43. DEFAULT

a. The City may, by providing written notice of default to the Consultant as set forth herein, terminate this Agreement in whole or in part if Consultant fails to:

- (1) Perform the services within the term specified in this Agreement or any extension thereof; or
- (2) Make progress, so as to endanger performance of this Agreement; or
- (3) Perform any of the other provisions of this Agreement.

b. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

c. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

d. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

e. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy (including but not limited to, immediate termination of this Agreement by the City in the event Consultant's default remains uncured for fifteen (15) days) or damages by initiating legal proceedings.

Section 44. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 45. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 46. ATTORNEYS' FEES

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 47. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

Section 48. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 49. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

CONSULTANT

By: _____
**(INSERT DEPT. HEAD NAME AND TITLE)
(MAYOR NAME AND TITLE IF OVER \$50K)**

By: _____
**(INSERT NAME & TITLE OF
PERSON SIGNING ON BEHALF,
OF CONSULTANT)**

Dated: _____

Dated: _____

ATTEST (over 50K)

By: _____
**Charlene Robinson,
City Clerk**

Dated: _____

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD
FORM:

By: _____
**Chuck Buquet,
Risk Manager**

By: _____
**Andre de Bortnowsky,
City Attorney**

Dated: _____

Dated: _____

EXHIBIT A

PROPOSAL

See Attachment

EXHIBIT B

ADDITIONAL CONTRACT TERMS

FOR FEDERALLY FUNDED AGREEMENTS

ARTICLE I INTRODUCTION
~~ARTICLE II CONSULTANT'S REPORTS OR MEETINGS~~
~~ARTICLE III STATEMENT OF WORK~~
~~ARTICLE IV PERFORMANCE PERIOD~~
ARTICLE V ALLOWABLE COSTS AND PAYMENTS
~~ARTICLE VI TERMINATION~~
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS
ARTICLE VIII RETENTION OF RECORD/AUDITS
ARTICLE IX AUDIT REVIEW PROCEDURES
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~~ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES (N/A)~~
ARTICLE XII STATE PREVAILING WAGE RATES
ARTICLE XIII CONFLICT OF INTEREST
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION
ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE
~~ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION (FORM INCLUDED IN RFP)~~
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION
~~ARTICLE XIX INSURANCE~~
ARTICLE XX FUNDING REQUIREMENTS
~~ARTICLE XXI CHANGE IN TERMS~~
ARTICLE XXII CONTINGENT FEE
ARTICLE XXIII DISPUTES
ARTICLE XXIV INSPECTION OF WORK
ARTICLE XXV SAFETY
ARTICLE XXVI OWNERSHIP OF DATA
ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR
ARTICLE XXVIII CONFIDENTIALITY OF DATA
ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION
ARTICLE XXX EVALUATION OF CONSULTANT
ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT
~~ARTICLE XXXII NOTIFICATION~~
~~ARTICLE XXXIII CONTRACT~~
~~ARTICLE XXXIV SIGNATURES~~

ARTICLE I INTRODUCTION

CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:
(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)
The Project Manager for the "CONSULTANT" will be (NAME)
The name of the "LOCAL AGENCY" is as follows:
City of Victorville

The Contract Administrator for LOCAL AGENCY will be (Stephan Longoria)

- A. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- B. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- C. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- D. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

Cost-Plus-Fixed Fee

Use [Exhibit 10-H1: Cost Proposal Format](#))

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In

no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work (reasonably contemplated by the originally-advertised scope) and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work set forth in Exhibit "A", LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of Victorville – Engineering Department
Stephan Longoria, Contract Administrator
14343 Civic Drive, Victorville, CA 92392
Phone (760) 955-5157
E-mail: slongoria@victorvilleca.gov

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

Cost per Unit of Work AGREEMENTs

Use [Exhibit 10-H3: Cost Proposal Format](#).

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in the Statement of Work attached hereto as Exhibit "A", as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "J," of this article shall not be exceeded unless authorized by AGREEMENT amendment.
- D. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- F. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- G. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according

to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.

- H. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- I. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of Victorville – Engineering Department
Stephan Longoria, Contract Administrator
14343 Civic Drive, Victorville, CA 92392
Phone (760) 955-5157
E-mail: slongoria@victorvilleca.gov

- J. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- K. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation. (COMPARE TO Retention of and Access to Records, MORE COMPREHENSIVE)

ARTICLE IX AUDIT REVIEW PROCEDURES (RECORDS SECTION 25)

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTS, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole

discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY

and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

- G. Prompt Payment of Withheld Funds to Subconsultants

No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage

from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general

prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.

- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
 - 1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who

fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- A. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- B. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- C. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- D. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- E. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- F. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title

VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- G. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- H. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 5%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. [Contract Assurance](#)

[Under 49 CFR 26.13\(b\):](#)

[CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.](#)

Failure by the CONSULTANT to carry out these requirements is a material breach of this [contract](#), which may result in the termination of this [contract](#) or such other remedy as the [recipient](#) deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying [CONSULTANT](#) from future [proposing](#) as non-responsible

E. [Termination and Substitution of DBE Subconsultants](#)

[CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.](#)

[The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:](#)

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:

- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or

consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary,

extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.