



City of Atwater

Citywide Traffic Signals Synchronization Project

City Project No. 23-01
Federal Project No. CML-5254(034)

Request for Proposals

November 01, 2023

Closing date and time:

Complete Proposal submittal package must be received
no later than 2:00 PM on
November 30, 2023

Contact person:

John Seymour, PE
City Engineer
jseymour@atwater.org
(209) 357-6252

City of Atwater
Community Development Department
750 Bellevue Rd
Atwater, CA 95301

Contents

Section 1. Background	1
1.1 Introduction	1
1.2 RFP Organization.....	1
1.3 Owner’s Objectives	2
1.4 Pre-Qualifications.....	2
Section 2. Project Overview	3
2.1 Project Scope.....	3
2.2 Project Budget and Funding.....	4
2.3 Project Schedule.....	4
2.4 Disadvantaged Business Enterprise (“DBE”) Participation.....	4
2.5 Prevailing Wages	5
Section 3. Procurement Process	6
3.1 Acknowledgement of RFP	6
3.2 Communications and Owner Contact	6
3.3 Procurement Schedule.....	6
3.4 Pre-Submittal Meeting and Site Tour.....	7
3.5 Payment Method	7
3.6 Federal-Aid Provisions.....	7
Section 4. Proposal Submission Requirements	9
4.1 Submittal Place and Deadline	9
4.2 Submission Format.....	9
4.3 Submission Content	9
4.3.1 Transmittal Letter.....	10
4.3.2 Part 1 – Executive Summary	10
4.3.3 Part 2 – Design-Builder Profile	11
4.3.4 Part 3 – Project Team	12
4.3.5 Part 4 – Experience	13
4.3.6 Part 5 – Project Approach.....	14
4.3.7 Part 6 – Professional Services Agreement Markup	15
4.3.8 Proposal Appendices.....	16

Section 5. Proposal Evaluation and Selection.....	18
5.1 General.....	18
5.2 Responsiveness	18
5.3 Minimum Qualification Requirements.....	19
5.4 Comparative Evaluation Criteria	19
5.5 Selection.....	23
Section 6. Conditions for Respondents	24
6.1 Owner Authority	24
6.2 Ineligible Firms and Individuals.....	24
6.3 Conflict of Interest	24
6.4 Confidentiality and Proprietary Information	25
6.5 Rights of the Owner	25
6.6 Obligation to Keep Project Team Intact.....	26
6.7 Addenda	27
6.8 Protests	27
Attachment A.....	29
Scope of Work.....	29
Attachment B.....	37
Required Forms.....	37
Attachment C	57
Draft Professional Services Agreement	57

Section 1. Introduction

1.1 Request for Proposals Overview

This Request for Proposals (“RFP”) for the City of Atwater Citywide Traffic Signals Synchronization Project (“Project”) invites Proposals from qualified firms (“Respondent”, “Proposer”) according to the requirements set forth in this RFP, including the format and content guidelines in Section 4. The Proposals will be reviewed and evaluated using the single-step, qualifications-based selection process described in Section 5. The capitalized terms in this RFP have the meanings as first used in the text of this RFP.

At completion of the evaluation process, the City of Atwater (“City”, “Owner”) will select a Respondent to enter into negotiations for the award of a Professional Services Agreement (see Attachment C, Sample Professional Services Agreement).

This RFP is subject to revision after the date of issuance via written addenda. Any such addenda will be posted on the Owner’s web site and will not be distributed directly to any potential Respondents. It is each Respondent’s responsibility to obtain all RFP addenda prior to submitting its Proposal.

This RFP is intended to be as descriptive as possible. However, Proposers may not take advantage of omissions or oversights in this document. Proposers must supply products and services that meet or exceed the requirements of this RFP.

All work associated with this RFP is subject to state and federal requirements and Proposers will be required to comply with all applicable federal, state, and local laws and regulations. Proposer's attention is directed to the Sample Professional Services Agreement for more information.

This RFP and the Professional Services Agreement are subject to the contract and review process requirements of Section 10.1.3 A&E Consultant Audit and Review Process of Chapter 10 of the Caltrans Local Assistance Procedures Manual.

In no event will Owner be liable for any costs incurred by any Respondent or any other party in developing or submitting a Proposal.

1.2 RFP Organization

This RFP consists of seven Sections and six Attachments:

- Section 1: Background
- Section 2: Project Overview

- Section 3: Procurement Process
- Section 4: Proposal Submission Requirements
- Section 5: Proposal Evaluation and Selection
- Section 6: Conditions for Respondents
- Attachment A: Scope of Work
- Attachment B: Required Forms
- Attachment C: Sample Professional Services Agreement

The contents of the RFP Attachments take priority over any conflicting statements in the RFP Sections.

1.3 Owner's Objectives

The Owner's objectives for delivery of the Project are as follows:

- **Quality:** Provide engineering designs, Plans, Specifications, and Estimates ("PS&E") that meet or exceed all applicable standards, regulations, and guidelines for Federal-aid projects, in addition to generally accepted industry standards. Final deliverables must be in a format ready for bidding and construction.
- **Cost:** Provide cost-effective engineering designs that fit the City's construction budget. Complete the engineering design Scope of Work on budget.
- **Schedule:** Achieve the scheduled completion date of March 29, 2024.
- **Safety:** Implement Accessible Pedestrian Signal ("APS") equipment into Project designs where it does not currently exist.

The Owner is committed to working in close collaboration with the selected Respondent to develop the Project's design to achieve the Project objectives.

1.4 Pre-Qualifications

There is no separate pre-qualification process for this RFP. Proposers must have at least five (5) years of continuous experience as an engineering firm in signal interconnect and signal timing projects. Experience shall be demonstrated in the Proposal with two to three similar project examples completed within the last Five (5) years.

Section 2. Project Overview

2.1 Project Scope

The City of Atwater has 23 signalized intersections that are completely within its jurisdiction for maintenance and signal timing. Of these 23 traffic signals, six (6) have recently been interconnected via the use of wireless antennas. The City's goal for this Project is to further reduce air emissions (ROG, NOx, PM2.5 and PM10) by interconnecting (via the use of wireless systems) and synchronizing the signal timing of the remaining seventeen (17) signalized intersections. Refer to Exhibit A included in RFP Attachment A for the locations of these intersections.

The intersections to be interconnected and synchronized are:

1. Fruitland Avenue at Winton Way
2. Bellevue Road at Winton Way
3. Bellevue Road at Seventh Street
4. Bellevue Road at Linden Street
5. Bellevue Road at Redwood Avenue
6. Bellevue Road at Shaffer Road/First Street
7. Bellevue Road at Granite Drive/Crest Road
8. Bellevue Road at Buhach Road
9. Juniper Avenue at Winton Way
10. Juniper Avenue at Shaffer Road
11. Juniper Avenue at Buhach Road-Avenue 2
12. Lake Ridge Street-Avenue One at Buhach Road
13. Green Sands Avenue at Buhach Road
14. Green Sands Avenue at Atwater-Merced Expressway
15. Green Sands Avenue at Gurr Road
16. Broadway Avenue-Clover Avenue at Buhach Road
17. Ashby Road at Buhach Road

Owner is soliciting proposals from qualified firms for professional engineering design services to complete PS&E and Coordinated Traffic Signal Timing Plans for the synchronization of seventeen (17) existing signalized intersections.

The Preliminary Project Scope of Work, design standards and performance requirements are described in more detail in Attachment A (Scope of Work); however, Respondents should modify the Scope of Work items where appropriate, taking into account their recent experience on similar projects.

2.2 Project Budget and Funding

The cost for professional services for the design phase of Project is currently budgeted at \$236,981. Such budget does not include furnishing Advanced Transportation Management System (“ATMS”) Software or Construction Engineering services. This is a Federal-aid Project, with a significant portion (\$209,799 or 88.53%) of the project budget provided by a grant from the USDOT FHWA Congestion Mitigation and Air Quality (“CMAQ”) Improvement Program being continued through the Bipartisan Infrastructure Law (“BIL”), enacted as the Infrastructure Investment and Jobs Act. Owner’s matching funds (\$27,182 or 11.47%) are provided from the City of Atwater’s allocation of Local Projects Funds from Measure V, Merced County’s 30-year, half-cent (\$0.005) transportation sales tax that was passed by voters in November 2016.

2.3 Project Schedule

The design of the project and NEPA clearance (anticipated to be by Categorical Exemption with Caltrans as Lead Agency) are expected to be completed no later than April 26, 2024.

2.4 Disadvantaged Business Enterprise (“DBE”) Participation

As a subrecipient of USDOT funding, the City of Atwater is required to comply with and enforce certain nondiscrimination requirements in the award and administration of USDOT assisted contracts and procurements, including all the elements of 49 CFR 26 entitled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, which apply to all federal-aid transportation projects. Participation by DBEs is possible during the Preliminary Engineering, Environmental, Final Design, Right of Way, and Construction phases of the project, and includes work as lead consultants, prime contractors, sub-consultants, subcontractors, suppliers, vendors, and truckers.

All federal-aid contracts that have subcontracting opportunities must have a DBE goal set. This includes, but is not limited to consultant services such as project-specific Architectural & Engineering (A&E) contracts. A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The DBE contract goal varies depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. The City has identified potential DBE subcontracting opportunities for topographic survey, environmental analysis and report, and geotechnical design report for this phase of the project. **This phase of the project has a DBE Participation Goal of 18%.**

2.5 Prevailing Wages

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations. Copies of the State of California wage schedules are available for review at <https://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. The successful Proposers shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work under the contract available to interested parties upon request and shall post copies at the successful Proposer's principal place of business and at the project site.

It shall be mandatory upon the Proposer to whom the contract is awarded, and upon any subconsultants, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors. Pursuant to Labor Code sections 1725.5 and 1771.1, the Proposer and all subconsultants must be registered with the Department of Industrial Relations ("DIR") at the time of submitting a proposal. No proposal will be accepted, nor any contract entered into without proof of the Proposer's and subcontractors' current registration with the DIR to perform public work. If awarded a contract, the successful Proposer and its subconsultants, of any tier, shall maintain active registration with the DIR for the duration of the project. The contract awarded pursuant to this RFP may also be subject to compliance monitoring and enforcement by the DIR.

Because this is a Federal-Aid project, Federal Payment of Predetermined Minimum Wage also applies. Federal Wage Determinations are available for review at <https://sam.gov/content/wage-determinations>. The higher of the prevailing wages between Federal and California requirements for any category must be paid.

The successful Proposer will be required 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.

Section 3. Procurement Process

3.1 Acknowledgement of RFP

Each potential Respondent should provide the Owner, within ten days of receipt of this RFP, an acknowledgement that it has received the RFP and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Respondent Contact, who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFP. Such acknowledgement must be sent in writing and a copy electronically transmitted to the Owner Contact.

3.2 Communications and Owner Contact

John Seymour, City Engineer, will act as the sole point of contact for this RFP for the Owner and shall administer the RFP process. All communications shall be submitted in writing, by fax, or by email, and shall specifically reference this RFP. All questions or comments should be directed to the Owner Contact noted below. Questions received after the date and time shown in Section 3.3 may not be answered. Questions sent to other City personnel may result in the disqualification of Respondent.

John Seymour, PE
City Engineer
City of Atwater
750 Bellevue Rd
Atwater, CA 95301
(209) 357-5252 Phone
jseymour@atwater.org

No oral communications from the Owner Contact or other individual is binding. No contact with Owner staff, City Council members, City Planning Commissioners, or any other public official, concerning the Project during the procurement process is allowed. A violation of this provision may result in disqualification of Respondent.

3.3 Procurement Schedule

The current procurement schedule is as follows:

- | | |
|--|----------------------------------|
| • Issue RFP | November 01, 2023 |
| • Presubmittal Meeting | November 08, 2023 |
| • Deadline for Questions | November 15, 2023 by 5:00 PM |
| • City Response to Questions | November 21, 2023 by 5:00 PM |
| • Submit Proposal | November 30, 2023 |
| • Presentations/Interviews (if required) | December 05, 2023 |
| • Proposal Evaluation/Selection | December 06, 2023 |
| • Contract Negotiations | December 15, 2023 (completed by) |
| • Award Professional Services Agreement | December 28, 2024 (completed by) |

3.4 Pre-Proposal Meeting

Owner will conduct a pre-proposal meeting for those interested in responding to the RFP. **Attendance at this meeting is not mandator; however, it is highly recommended that each potential Respondent attend the Pre-Proposal Meeting.** The meeting will be held at City of Atwater Council Chambers on November 08, 2023 starting at 10:00am. At this meeting, Owner will offer information about the Project and the procurement process. Those who attend the pre-submittal meeting will have the opportunity to ask questions of staff regarding the RFP. Due to space constraints, each firm is limited to three (3) attendees at the meeting.

3.5 Method of Payment

The method of payment for this Contract shall be based on a Lump Sum and/or Specific Rates of Compensation Not to Exceed basis, based on the use of the most current Caltrans approved Indirect Cost Rate (ICR) or the Safe Harbor Rate.

3.6 Federal-Aid Provisions

The proposing Consultant's services are federally funded, which necessitate compliance with additional requirements. Special attention is directed to RFP Attachment 2 – Local Assistance Procedures Manual Exhibit (LAPM) 10-I, Notice to Proposers DBE Information. The proposing Consultant shall complete and submit the following forms with the proposal to be considered responsive. These forms and instructions are provided for the proposer in RFP Attachment 2.

- Local Agency Proposer DBE Commitment (Consultant Contracts); (LAPM 10-O1). The local agency's current contract DBE Goal is 18%.
- DBE Information - Good Faith Effort (LAPM 15-H) – Required only if DBE goal is not achieved. It is recommended that Proposer prepare and submit a GFE irrespective of meeting the DBE goal.
- Disclosure of Lobbying Activities (LAPM 10-Q).

Upon award and through completion of the project, the successful proposing Consultant will be required to follow applicable federal-aid requirements and shall complete and submit with the agreement the following forms at the time of award:

- Local Agency Proposer DBE Information (Consultant Contracts) (LAPM 10-02);
- Any other relevant forms required during the project.

Consultant shall demonstrate familiarity of providing services for federally funded projects and has clear understanding of requirements/needs to facilitate the project through Caltrans Local Assistance and Local Assistance Procedures Manual.

Section 4. Proposal Submission Requirements

4.1 Submittal Place and Deadline

Interested qualified firms are to submit a Proposal to the City as required by this RFP. It is the intent of City to award the contract to the proposer that clearly demonstrates the ability to provide these services with high professional standards.

Five bound paper documents (one original and four copies), as well as one electronic version of the Proposal on USB flash drive in PDF format, must be received no later than **2:00pm on November 30, 2023**, addressed to:

John Seymour, PE
City Engineer
C/O Office of the City Clerk
City of Atwater
750 Bellevue Rd
Atwater, CA 95301

Each Respondent assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after the submittal deadline will be deemed non-responsive and returned. The delivered packaging containing the Proposal documents must note **“Atwater Citywide Traffic Signals Synchronization Project Proposal Enclosed”** on its face. The name of the Proposer submitting the Proposal should also be clearly marked on the outside of the envelope.

4.2 Submission Format

The Proposal must not exceed 40 total pages (most or all 8½ x 11 inches with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of ten of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger must be used in Proposal Parts 1 – 6.

4.3 Submission Content

The content requirements set forth in this RFP represent the minimum content requirements for the Proposal. It is the Respondent’s responsibility to include information in its Proposal to present all relevant qualifications and other materials. The Proposal, however, should not contain standard marketing or other general materials. It is the Respondent’s responsibility to modify such materials so that only directly relevant information is included in the Proposal.

These guidelines are provided for standardizing the preparation and submission of Proposals by all Consultants. The intent of these guidelines is to assist Consultants in preparation of their Proposals, to simplify the review process, and to help assure consistency in format and content.

The Proposal must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Firm Profile and Qualifications
- Part 3 – Project Team
- Part 4 – Relevant Experience
- Part 5 – Project Approach
- Part 6 – Professional Services Agreement Markup Summary
- Appendix A – Required Forms
- Appendix B – Resumes
- Appendix C – Certificate of Insurance
- Appendix D – Professional Services Agreement Markup
- Appendix E – Separate, Sealed Cost Proposal

4.3.1 Transmittal Letter

Respondents must submit a transmittal letter (maximum two pages) on the Respondent's letterhead. It shall be addressed to the City's designated contact and must be wet signed in blue ink by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent Contact, and must specify who would be the Proposer's signatory to any contract documents executed with the Owner. The transmittal letter shall reference this RFP and may include other information deemed relevant by the Respondent.

The transmittal letter must refer to Proposal Appendix A (Forms for Affirmation of Compliance), based on the forms in RFP Attachment B (Required Forms). All addendums received must be acknowledged in the transmittal letter.

4.3.2 Part 1 – Executive Summary

The executive summary (maximum two pages) must include a concise overview of the key elements of the Proposal and must summarize and refer to information in the Proposal concerning satisfaction of the Minimum Qualifications Requirements. The executive summary shall not be used to convey additional information not provided elsewhere in the Proposal.

4.3.3 Part 2 – Firm Profile and Qualifications

A detailed and complete description of the company proposed as the Proposer must be provided in Part 2 of the Proposal. (The term “company” can refer to either a single entity or a joint venture.) Information concerning Key Personnel and other firms that may be included on the Project Team, such as subconsultants and subcontractors, should be provided in Part 3 of the Proposal. The Proposer Profile must include the following information.

- **General**

Provide general information about the Proposer, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.

- **Legal Structure**

Identify whether the Proposer is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the owners of the Proposer (*e.g.*, shareholders, members, partners, and the like) who hold an interest of ten percent or more.

- **Project Office Location**

Identify where the Proposer intends to maintain its project office(s) and where the majority of the design work will be performed.

- **Insurance**

A letter or Certificate of Insurance from the proposer’s insurance company must be provided stating its ability to acquire and provide the minimum limits for the required insurance as shown in the Sample Professional Services Agreement.

The required insurance must be obtained and maintained from insurance companies that have an A.M. Best Rating of A:VII or better and are duly licensed or authorized in California.

- **Financial Management and Accounting**

The Agreement shall not be awarded to a Proposer 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. The Proposal shall include evidence of adequate financial management systems that meet these requirements and document their use under relevant experience.

The Proposal must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Proposer’s ability to perform its contractual commitments.

- **Material adverse changes in financial position.** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- **Legal proceedings and judgments.** List and briefly describe any pending or past (within 10 years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the general counsel.
- **Completion of contracts.** Has the Proposer failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.
- **Violation of laws.** Has the Proposer been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances.
- **Conflict of Interest Statement.** The proposing Consultant shall disclose any financial, business or other relationship with the City 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.

If any of the above questions are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Proposer's ability to perform its contractual commitments.

The Respondent must notify the Owner of any changes subsequent to submission of the Proposal and before the selection process is completed (and, in the case of the selected Respondent, before executing the Professional Services Agreement).

4.3.4 Part 3 – Project Team

The composition, organization and management of the Project Team must be described in two separate subsections. Describe the roles and organization of your proposed team for this project. Indicate the composition of subcontractors and number of project staff, facilities available and experience of your team as it relates to this project.

Proposer/other firms:

- Identify any other firms (such as subcontractors and subconsultants) included on the Project Team along with the Proposer, and describe the scope of the Proposer's and each firm's services and responsibilities during the Project.
- Provide an organizational chart showing the reporting relationships and responsibilities of the Proposer and any other firms and describe the Proposer's approach to the management of such firms.

Key Personnel

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities during the Project.
- Provide an organizational chart showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations) and describe the Proposer's approach to the management of such Key Personnel.
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time during the Project.
- Provide resumes for all Key Personnel in Proposal Appendix B (Resumes). Resumes must be limited to two pages per individual and include:
 - Academic and professional qualifications
 - Professional registration (as applicable)
 - Experience as it relates to the Project and to the individual's specified role on the Project
 - Length of employment with firm.

Any change in the firms or Key Personnel included in the Proposal would require Owner approval.

4.3.5 Part 4 – Relevant Experience

The Proposal must describe the performance history and experience of the Project Team (including subconsultants, where applicable) completing similar projects in a timely and cost-effective manner. Proposer shall demonstrate experience managing subconsultants (if applicable) on similar projects. This section shall clearly demonstrate experience and success of the Project Team working on Federal and State funded transportation projects.

Reference Projects

The City will only consider submittals from Consultants that demonstrate they have successfully completed comparable projects. These projects must illustrate the quality, type, and past performance of the project team. Submittals shall include a detailed description of a minimum of three (3) projects within the past five (5) years which include the following information:

Each project description shall contain at least the following information:

- Name of owner/agency
- Owner/agency reference (project manager) and contact information
- Role of Respondent
- Contract value
- Funding source
- Date of contract
- Date of completion
- Project objective
- Description of the project showing relevance to this Project
- Project outcome
- Names of firms and Key Personnel that participated in project and are included in this Proposal, along with a clear description of the roles and responsibilities of each.

In addition, a one-page summary table should be provided to cross-reference the Project Team (firms and Key Personnel) with participation in the reference projects.

4.3.6 Part 5 – Project Approach

Describe your project and management approach. Provide a detailed description (maximum five pages) of the Proposer's approach for managing the team and performing its services during the Project. The following items should be addressed:

- Discuss how a collaborative relationship with the Owner would be established during design development, scheduling, and cost estimating.
- Discuss how the design and construction processes will interface (e.g., how constructability issues would be addressed).
- Identify the work components critical to the Project's success and how these components would be achieved.
- Discuss how key risk factors will be identified and mitigated.
- Provide a Project-specific quality plan.
- Provide a detailed schedule for all phases of the project and the proposing Consultant's services including time for reviews and approvals.
 - Proposals shall include tentative project schedule showing the timeline of all deliverables.
 - The final schedule will be negotiated with the awarded Proposer based on its individual estimate or required time and any changes to the scope of work.
 - It is anticipated that work shall begin within two weeks of an executed Agreement between the City and the awarded Proposer, following Notice to Proceed.
- Provide a Detailed Scope of Work
 - See the Project Scope of Work provided as RFP Attachment A
 - Include a detailed Scope of Work Statement describing all services to be provided.

- Describe project deliverables for each phase of your work.
- Describe your cost control and budgeting methodology for this project.
- Provide responses to the following:
 - Describe critical engineering design issues associated with the project and how you will address these.
 - Describe critical environmental issues and how you will address these.
 - How cost and schedule could be minimized.

4.3.7 Part 6 – Professional Services Agreement Markup

A sample Professional Services Agreement (“Agreement”) is included in RFP Attachment C and attached hereto and incorporated herein by this reference for review by the Proposer. Please take time to thoroughly read and understand the entire Agreement. The City expects all Proposers are willing and able to sign the Agreement as presented. If a Proposer believes specific items in the Agreement are out of date, not applicable, or place an undue burden or cost on the Proposer or City, the Proposer must present these concerns in writing in Proposal Appendix D (Professional Services Agreement Markup). If applicable, Proposal Appendix D must include a detailed markup of the Draft Professional Services Agreement (including any attachments), setting forth any and all revisions requested by the Respondent.

Part 6 of the Proposal must provide a summary description any proposed revisions included in Proposal Appendix D (Professional Services Agreement Markup) and explain the rationale for such requested revisions and the associated benefits to the Owner.

The Owner is not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Respondent, if any, in the Professional Services Agreement Markup when negotiating and finalizing the Professional Services Agreement. Furthermore, the Owner may request additional revisions during negotiations and before finalizing the Professional Services Agreement.

Respondents are encouraged to carefully review RFP Attachment C (Draft Professional Services Agreement) and to submit written questions and comments by the deadline specified in Section 4. Based on its assessment of the comments submitted, the Owner (at its sole discretion) may modify the Draft Professional Services Agreement via addenda. The Owner expects that this review and comment process will substantially reduce the need for extensive post-selection negotiation.

Any exception to the Agreement made as part of a Proposal can be grounds for disqualification of the Proposal.

4.3.8 Proposal Appendices

- Appendix A

Provide all Required Forms (See RFP Attachment B).

The following forms, attached hereto and incorporated herein by this reference, shall be filled out and submitted with the proposal:

- i. Consultant Proposal DBE Commitment (Exhibit 10-O1)
- ii. Disclosure of Lobbying Activities (Exhibit 10-Q)
- iii. DIR Registration Certification
- iv. Contractor Cost Certification
- v. Specific Rates of Compensation/Cost schedule

The following forms, attached hereto and incorporated herein by this reference, shall be filled once highest ranked Proposer has been notified by the City of Atwater:

- i. Consultant Contract DBE Commitment (Exhibit 10-O2)
- ii. Good Faith Efforts (Exhibit 15-H)
 - (1) Offerors must meet the DBE goal of 18.0% contained in this RFP or must evidence Good Faith Efforts to meet the goal. The adequacy of Offeror's Good Faith Efforts shall be determined in City's sole discretion. Offerors are encouraged to submit a completed Good Faith Efforts form even if Offeror is submitting a Consultant DBE Commitment form and believes it has met the DBE goal. Submitting evidence of Good Faith Efforts will protect Offeror's eligibility for award of the contract if City determines that the Offeror failed to meet the DBE goal for various reasons, e.g., a DBE firm was not certified at proposal opening, or the Offeror made a mathematical error.
- iii. Indirect Cost Rate Showing Allowable and Unallowable Costs per part 31 of the Federal Acquisition Regulation (FAR).
- iv. Caltrans approval of the proposed ICR.
 - (1) If Proposer or any of its subcontractors do not have an approved ICR please also submit the following:
 - Internal Control Questionnaire (ICQ) for Consulting Engineers
 - Payroll Certification along with proof of pay rates for all proposed staff. Proof of pay rate shall be based on the pay rate effective at the time of the notice of this RFP.
 - Overtime Work Policy
 - Bonus Policy
 - Executive Compensation Analysis
 - Payroll Summary of Proposed Staff
 - Trail Balance on an Accrual Basis for Period covered by the ICR
 - Income Statement on an Accrual Basis for the period covered by the ICR

- Appendix B

Provide Resumes for all Key Personnel. See RFP Section 4.3.4.

- Appendix C
Provide Certificate of Insurance (See Sample Professional Services Agreement).
- Appendix D
Provide Professional Services Agreement Markup, if applicable.
- Appendix E
The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit.

In order to assure that the City is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the proposal shall include a cost proposal for each service of the proposal. Proposing Consultants will be required to submit certified payroll records, as required. Five (5) wet signed copies of the Cost Proposal shall be submitted in a separate sealed envelope from the proposal. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and most qualified consultant has been selected. Reference sample cost estimates in RFP Attachment B. Consultant shall prepare a Lump Sum Fee estimate with progress payments at defined milestones/tasks. Cost proposal must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Selected Consultant shall comply with Chapter 10.1.3 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process.

Section 5. Proposal Evaluation and Selection

5.1 General

All proposals will be evaluated by a City of Atwater Selection Committee (“Committee”). The Committee may be composed of City staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the Proposers. The evaluation of the Proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the City of Atwater Contract Administrator/Project Manager only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each Proposal meeting the qualification requirements set forth in this RFP. Proposers should bear in mind that any proposal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the City’s requirements as set forth in this RFP.

The selection process may include oral interviews at the sole discretion of the Committee. If required, Proposers will be notified of the time and place of oral interviews and of any additional information that may be required to be submitted.

Upon completion of the evaluation and selection process, only the cost proposal from the most qualified consultant will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

5.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in rejection of the Proposal as non-responsive. At its sole discretion, however, the Committee may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

5.3 Minimum Qualification Requirements

Each responsive Proposal will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any Proposal that does not satisfy all the following Minimum Qualification Requirements may be rejected.

- **Material adverse condition.** The Proposer must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project.
- **Licensing and registration.** The Proposer and each firm must be licensed in California for the type of work to be performed. The Designer must include in responsible charge a civil engineer registered in California.
- **Design experience.** Within the past five (5) years, the Proposer must have successfully completed the design of at least three (3) similar projects for municipal clients in California.

5.4 Comparative Evaluation Criteria

The selection committee will evaluate and rank the responsive Proposals that satisfy the Minimum Qualification Requirements by applying the weighted comparative evaluation criteria set forth below. Completeness of Response and Conflict of Interest Statement are evaluated on a pass/fail basis as part of the Minimum Qualification Requirements.

Proposals will be evaluated according to each Evaluation Criteria and scored on a zero to five point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any project is five hundred (500) points.

Rating Scale		
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of proposal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFP.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.

3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Evaluation Criteria Summary and their respective weights are as follows:

Evaluation Criteria		
No.	Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	20
3	Organization & Approach	15
4	Scope of Services to be Provided	15
5	Schedule of Work	10
6	Conflict of Interest Statement	Pass/Fail
7	Local Presence	5
8	References	10
--	Subtotal / Total	75
Optional Oral Interviews Evaluation Criteria		
9	Presentation by Team (Optional)	10
10	Q&A Response to Panel Questions	15
--	Subtotal	25
--	Total	100

5.4.1 Completeness of Response (Pass/Fail)

- a. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration. Responses that are rated a Fail and are not considered may be picked up at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.

5.4.2 Qualifications & Experience (20 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to conduct traffic engineering services on both federal and nonfederal-aid projects.

5.4.3 Organization & Approach (15 points)

- a. Describes familiarity of project and demonstrates understanding of work completed to date and project objectives moving forward.
- b. Roles and Organization of Proposed Team
 - i. Proposes adequate and appropriate disciplines of project team.
 - ii. Some or all of team members have previously worked together on similar project(s).
 - iii. Overall organization of the team is relevant to City needs.
- c. Project and Management Approach
 - i. Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.
 - ii. Team successfully addresses Site Planning and Programming efforts.
 - iii. Project team and management approach responds to project issues. Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.
- d. Roles of Key Individuals on the Team
 - i. Proposed team members, as demonstrated by included resumes, have relevant experience for their role in the project.
 - ii. Key positions required to execute the project team's responsibilities are appropriately staffed.
- e. Working Relationship with City and/or Similar Agencies
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
 - iii. Proposal responds to need to assist City during the project.

5.4.4 Scope of Services to be Provided (15 points)

- a. Detailed Scope of Services to be Provided
 - i. Proposed scope of services is appropriate for all phases of the work.
 - ii. Scope addresses all known project needs and appears achievable in the timeframes set forth in the project schedule.
- b. Project Deliverables
 - i. Deliverables are appropriate to schedule and scope set forth in above requirements.
- c. Cost Control and Budgeting Methodology
 - i. Proposer has a system or process for managing cost and budget.
 - ii. Evidence of successful budget management for a similar project.

5.4.5 Schedule of Work (10 points)

- a. Schedule shows completion of the work within or preferably prior to the City's overall time limits.

- b. The schedule serves as a project timeline, stating all major milestones and required submittals for project management and Federal-Aid compliance.
- c. The schedule addresses all knowable phases of the project, in accordance with the general requirements of this RFP.

5.4.6 Conflict of Interest Statement (Pass/Fail)

- a. Discloses any financial, business or other relationship with the City that may have an impact upon the outcome of the contract or the construction project.
- b. Lists current clients who may have a financial interest in the outcome of this contract or the construction project that will follow.
- c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction project.

5.4.7 Local Presence (5 points)

- a. A statement addressing firm’s ability to establish an office within the County or surrounding area.

5.4.8 References (10 points)

- a. Provide as reference the name of at least three (3) agencies you currently or have previously consulted for in the past five (5) years.

5.4.9 Presentation by Team (10 points) (If Required)

- a. Team presentation conveying project understanding, communication skills, innovative ideas, critical issues and solutions.

5.4.10 Q&A Response to Panel Questions (15 points) (If Required)

- a. Proposer provides responses to various interview panel questions.

Weighted scores for each Proposal will be assigned utilizing the following table:

Consultant Proposal Scoring				
No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Completeness of Response	N/A	Pass/Fail	Pass/Fail
2	Qualifications & Experience		20	
3	Organization & Approach		15	
4	Scope of Services to be Provided		15	
5	Schedule of Work		10	
6	Conflict of Interest Statement	N/A	Pass/Fail	Pass/Fail
7	Local Presence		5	

8	References		10	
9	Presentation by Team (Optional)		10	
10	Q&A Response to Panel Questions (Optional)		15	
Total:	--	--	100	

5.5 Selection

After the evaluation process is complete, the Owner will notify Respondents of the rankings. The top-ranked Respondent will be either selected for contract award on the basis of its Professional Services Agreement Markup or offered the opportunity to negotiate the final terms of the Professional Services Agreement. However, if the Owner determines (at its sole discretion) that the top-ranked Respondent’s Professional Services Agreement Markup may require protracted negotiations, the Owner may choose to either select or negotiate with the next-ranked Respondent. If negotiations with any Respondent are not successful, the Owner may either select the next-ranked Respondent for award on the basis of its Professional Services Agreement Markup or offer it the opportunity to negotiate the Professional Services Agreement (and so on for lower-ranked Respondents).

Section 6. Conditions for Respondents

6.1 Owner Authority

Owner is a municipal corporation in the State of California. City Council Resolution No. 3407-23 authorizes and directs the City Manager, or his/her designee, to act on the City's behalf and execute all non-construction agreements or documents required for CMAQ Project CML-5254(034).

6.2 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the Owner for this Project and are therefore not eligible to assist or participate with any Respondent that submits a Proposal for the Project.

- **JLB Traffic Engineering, Inc.**
- **VVH Consulting Engineers**

6.3 Conflict of Interest

Each Respondent submitting a Proposal is responsible for determining whether or not its participation or the participation of its subconsultants in the proposed Professional Services Agreement constitutes a conflict of interest or a potential conflict of interest under California Government Code Sections 1090 or 83111-83116, or other applicable law. Each respondent must investigate and manage any potential conflict of interest as part of considering whether to submit a Proposal and when assembling its Project team. Given the complexity in determining the existence of a conflict of interest, it is difficult to generalize about what facts might, or might not, result in a conflict of interest. Accordingly, the following are intended to be general guidelines that potential Respondents should treat solely as a starting point in their analysis:

- Any person or firm who substantially participated in the preparation of this RFP package, or any material element thereof, is prohibited from participating in the preparation of a Proposal by, or otherwise being a part of, any Project team responding to this RFP.
- A Respondent is prohibited from including as a member of their Project team or otherwise using on this project any person who substantially participated in the preparation of the RFP , or any material element thereof.

The existence of such a conflict of interest is a basis for Owner to disqualify a Respondent's participation in this RFP process. If Owner determines that a Respondent is disqualified because of the existence of such a conflict of interest, it will provide the Respondent with a written statement of the facts leading to that conclusion.

6.4 Confidentiality and Proprietary Information

All materials and information submitted to Owner under this RFP process becomes the exclusive property of Owner but, if not otherwise a public record under the California Public Records Act (California Government Code section 6250 et seq.), shall not be open to public inspection. All submissions and other correspondence will be subject to the following requirements:

- After issuance of a notice of intent to award a Professional Services Agreement, all submissions will be subject to public disclosure to the extent such information constitutes a public record under the California Public Records Act.
- There are a limited number of exceptions to the disclosure requirements under the Public Records Act, such as for trade secret information. Owner is not in a position to determine what information in a submission, if any, may be subject to one of these exceptions. Accordingly, if a Proposer believes that any specific portion of its submission is exempt from disclosure under the Public Records Act, the Proposer must mark the portion of the submission as such and state the specific provision in the Act that provides the exemption and the factual basis for claiming the exemption. For example, if a Proposer believes a submission contains trade secret information, the Proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption for such information and the factual basis for claiming the exemption.
- If a request is made for information in a submission that a Proposer has properly marked as exempt from disclosure under the Public Records Act (e.g. information that the Proposer has marked as “Confidential”, “Trade Secret” or “Proprietary”), Owner will provide the Proposer with reasonable notice of the request and the opportunity to seek protection from disclosure by a court of competent jurisdiction. It will be the Proposer’s sole responsibility to seek such protection from a court. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- Any submission that contains language attempting to make overbroad portions of the submission exempt from disclosure or that fails to provide the exemption information required above will be considered a public record in its entirety. Therefore, do not mark your entire submission as “confidential,” “trade secret,” or “proprietary.”

6.5 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of Proposals and award of the Professional Services Agreement, Owner reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time prior to the execution of the Professional Services Agreement, without incurring any obligations or liabilities.
- Reject any or all Proposals.
- Modify the procurement schedule.
- Waive deficiencies, informalities and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to information submitted with any Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, information that has the potential to improve the understanding and evaluation of the Proposals.
- Seek clarification from any Respondent to fully understand information provided in the Proposal and to help evaluate and rank the Respondents.
- Reject a Proposal containing exceptions, additions, qualifications or conditions not called for in the RFP or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including prior experience, included in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its Proposal.

6.6 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the procurement process and execution of the Project. (The anticipated dates for award of the Professional Services Agreement and for completion of the Project are set forth in Subsection 2.3 of this RFP.) If extraordinary circumstances require a change, it must be submitted in writing to the Owner Contact, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Design-Builder's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

6.7 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner may issue written addenda. **The Owner will not transmit addenda to potential Respondents.** The Owner will post all addenda on the Owner's website at <https://www.atwater.org/bids-rfps-RFPs/> and through any third-party service where they RFP was initially advertised. **It is Respondent's responsibility to obtain all addenda prior to submitting its Proposal.**

6.8 Protests

The following procedures shall apply whenever any interested party desires to dispute the City's selection of a Proposer for award of a Professional Services Agreement or any other aspect of the RFP process.

A Proposer may protest a contract award if the Proposer believes that the award is inconsistent with the City's policies, or if this RFP is not in compliance with law.

A Proposer has no right to dispute a determination that it is not qualified based upon a late or incomplete Proposal submittal. There is no right to dispute the RFP process requirements if any objection thereto could have been addressed by submitting a question and/or objection prior to the Deadline for Questions in Section 3.3. The protest by the interested party shall be undertaken at the interested party's expense.

The interested party initiates a protest by delivering to Owner a written notice requesting a hearing and setting forth the grounds for the protest as well as all the facts relevant to the protest. The protesting party must deliver the written notice to the same location that the Proposals were required to be delivered. The protesting party must deliver such written notice within five (5) business days following the date of Owner's Notice of Selection. Any protest submitted after 5:00 p.m. of the fifth business day after notification of contract award will be rejected by City as invalid. **The protesting party waives its right to dispute Owner's decision if it fails to deliver the notice within five (5) business days following the date of Owner's written Notice of Selection.**

The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address, and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived. City will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing.

Protests that do not follow these procedures shall not be considered and shall fail to exhaust administrative remedies with the City. The protest procedures constitute the sole administrative remedy available to any party under this procurement. Upon exhaustion of this remedy no additional recourse is available with the City of Atwater.

Upon receipt of the formal protest, the City Manager, or his/her designee, will attempt to resolve the protest and/or render a decision with respect to the merits of the protest. City will, within a reasonable time, provide the Proposer submitting the protest with a written statement concurring with or denying the protest. The decision of the City Manager, or his/her designee, is final, is not subject to appeal or reconsideration, and constitutes the protesting party's sole, entire, and exclusive administrative remedy.

A protest shall be disallowed when, in the judgment of the City Manager, or his/her designee, it has been submitted: (1) as a delay tactic; (2) for the purpose of posturing the protester advantageously for future procurement; (3) in a form that deviates from the one prescribed; (4) without adequate factual basis or merit; or (5) in an untimely manner or other procedural irregularity or deviation.

Failure to comply with these procedures will constitute a waiver of any right(s) to further pursue the protest, including filing a Government Code claim or legal proceedings.

Attachment A

Scope of Work

1. GENERAL DESCRIPTION OF SCOPE OF WORK

- a. The Scope of Work will ultimately be negotiated between the City and the successful Proposer and placed within the Agreement.
- b. The following represents the City's best attempt to define the goals of the RFP and better describe its expectations of work to be performed. The Scope of Work should not be considered complete or absolute by the Proposer. Proposer shall review the scope of work below and add or remove items based on their own knowledge and experience on recently completed Projects and ITS communication standards for signal interconnect and signal timing synchronization projects.
- c. The Project consists of interconnecting (via the use of wireless systems) and synchronizing the signal timing for seventeen (17) signalized intersections. Traffic signal controllers will be upgraded, and Accessible Pedestrian Signals (APS) will be installed at each intersection where none currently exist. The City will also be furnished with Advanced Traffic Management System (ATMS) software.
- d. The work shall comply with the requirements of all of the following without limitation, and shall apply to this RFP and any subsequent contract as though incorporated herein by reference:
 - i. Federal laws
 - ii. State laws
 - iii. Local laws
 - iv. Rules and regulations of governing utility districts
 - v. Rules and regulations of other authorities with jurisdiction over the procurement of products.

The Consultant shall comply with all insurance requirements of the City, included in the Sample Professional Services Agreement.

Any modifications proposed to this solicitation are welcome provided they are innovative, advanced, and well thought out methodologies and shall be identified as optional and priced out separately in the sealed fee proposal.

2. SCOPE OF WORK

Successful Proposer must:

- Coordinate effectively with City staff and make sufficient site visits to obtain all required information to prepare a complete design for the Project.
- Complete the PS&E and the coordinated signal timing plans in accordance with the California MUTCD.
- Provide the City with a complete set of construction plans, special provisions, technical specifications, and construction cost estimates for the installation of the wireless signal interconnect improvements, upgraded controllers, accessible pedestrian signals, coordinated time of day signal timing plans, and ATMS software. During the construction phase, the successful Proposer will enter the signal timing plans into the controllers and perform any fine tuning. The work shall meet all applicable state and federal requirements.

Task 1 – Project Management and Meetings:

The City Engineer will serve as the contract manager and direct liaison between the Consultant and Caltrans District 10 Division of Local Assistance. The consultant shall be responsible for project

management activities throughout the life of the contract and the scope of activities includes but is not limited to, coordinating and being responsible for scheduling meetings, managing the project schedule, preparing and distributing minutes, field reviews, tracking action items for the City and consultant sub-contractors, and preparing all submissions for the City to submit to Caltrans Local Assistance.

The Consultant shall schedule, facilitate, coordinate, and attend all identified project meetings with the City's representatives to be held at the City of Atwater, by teleconference, or at the project site, if needed. The Consultant shall be responsible for developing meeting agendas and keeping meeting minutes for all meetings. Meeting agendas and minutes shall be submitted to the City of Atwater within 2 business days before and after a meeting is held. Consultant shall be responsible for timely response to City Staff questions/correspondence within 2 working days of request from the City. Consultant is to clearly describe the number of meetings anticipated for a project of this type. The following meeting is the minimum required for this project and the consultant can propose more meetings if the consultant desires. The number of meetings shall be reflected in the not to exceed cost proposal.

- a. Project Meetings: The following meetings, at a minimum, shall be included in the base services to be provided by the Consultant.
 - i. Project Kick-Off Meeting (one meeting): Upon receiving Notice to Proceed, the Consultant is expected to review all base data provided by the City and prepare for the kick-off meeting with the City. This meeting shall occur within one (1) week of issuance of the Notice to Proceed. This meeting shall be used to assure complete understanding of the scope of the Project and relevant milestones. The Consultant shall be prepared to discuss the following topics.
 - (1) Review and discuss the scope of work (tasks, deliverables, meetings, etc.)
 - (2) Review and discuss the schedule (updates, critical path items, subconsultant work, etc.)
 - (3) Review and clarify the respective responsibilities of the City and Consultant responsibilities
 - (4) Discuss data requests and delivery methods
 - (5) Visit the project site and assess existing conditions
 - ii. Preliminary Design (one meeting): The Consultant shall prepare a preliminary design to identify any potential conflicts or issues that could cause delays in the design and construction process. The preliminary design shall identify the following items.
 - (1) Depict the design approach to delivering the construction plans
 - (2) Identify ITS hardware to be used
 - (3) Identify any potential conflicts with utilities and existing features.
 - (4) Depict the existing and proposed signal interconnect layout.
 - iii. Plan check comments review meetings: The Consultant shall meet with the City to review the plan check comments after each submittal. The Consultant will be responsible for scheduling the appropriate update meetings, developing a meeting agenda, and keeping the meeting minute summaries for all meetings. Consultant will be responsible for timely response to City Staff questions/correspondence within 2 working days of request from the City. Consultant is to clearly describe the number of meetings anticipated for a project of this type.

Task 2 – Signal Interconnect Improvement Plans:

For the Base CAD files, City anticipates that Consultant will be able to use high resolution aerials to layout the existing roadway features, such as but not limited to edge of pavement, face of curb, sidewalk, traffic signal poles, traffic signal cabinets, median islands, general striping alignments, and approximate location of existing signal conduits and pull boxes. The City does not believe that the project warrants the need for a topographic survey; however, if Proposer believes otherwise, Proposer should include language as to why this is the case and include as an optional service the collection of a topographic survey. In order to provide a complete base map, Consultant may use any methods seen fit by Consultant, including but not limited to existing records, plans, aerials, and site investigations. Consultant shall include all items necessary to complete the civil engineering design plans for the Project as needed. All design shall be in compliance with City of Atwater Improvement Standards and Specifications, current ADA/Accessibility Standards, Complete Streets Policy, California Manual on Uniform Traffic Control Devices, and applicable Caltrans Standards due to the federal CMAQ funding of this Project.

- i. General: Consultant shall provide signal interconnect improvement plans to improve the intersections and implement signal interconnectivity. The signal interconnect improvement plans shall include but not be limited to:
 - (1) Cover Sheet – Shall include general notes, legend, abbreviations, project title, sheet index, overall project map with sheet limits shown, vicinity map, utility company contacts, and other items as determined necessary by the City.
 - (2) Signal Interconnect Improvement Plans and Demolition Plans (as necessary) - These drawings shall show all proposed improvements. Plan scale will most likely be 1"=40' horizontal and 1"=2' vertical. Some areas may require larger scales to show the appropriate amount of detail required for construction. Drawing scales shall be determined by Consultant and approved by City. Each drawing shall show the plan view of the proposed improvements. The existing base map information shall be faded in the background of the plans and shall be plan readable at 50% plotted size. The minimum size for all text shall be 0.1". Civil Plan and Profile Drawings shall include, but not be limited to the following items:
 - Removal and replacement information for all effected improvements.
 - Locations of utilities that are being relocated (as necessary).
 - Depict the location of all existing utilities (as identified through completion of base map). This would only apply to areas where new poles (if any) are proposed to be installed (if any).
 - Hatching patterns, where applicable, shall properly define construction.
 - Dimensions where necessary.
 - Construction Keynotes to direct Construction Activities.
 - All sheet match lines shall have sheet references listed.
 - (3) IP Address Scheme Sheet(s) - Prepare an IP Address Scheme via consultation with the City of Atwater IT staff. The IP Scheme shall be included on a plan sheet. The IP scheme shall include but not be limited to the wireless radios, the switches and any other equipment needed to have a fully operational interconnected traffic signal system.
 - (4) Details Sheets (including equipment details, other details, Caltrans Standard Plans, and City

Standard Details) – These sheets shall include details needed for all the proposed work and are not limited to details for trenches, pull boxes, equipment installation, and any other details deemed necessary to adequately direct construction activities. All details referenced on the plans shall be included on the details sheets. All plans will be on City of Atwater title block. All plans shall be prepared in sufficient detail to provide the necessary guidance for construction as determined by the City Engineer.

- ii. Existing Utilities: Consultant shall be responsible for acquiring all record utility maps within the project limits and for showing existing utilities on the plans. The base map shall call out the size and type of pipe for all water, gas, sewer, and storm drain lines, manholes, vaults, and other underground structures shown on utility plats. However, this will only be required for the area(s) in the vicinity of new poles proposed by Consultant’s design. Proposer shall describe why, as part of the PS&E, utility mapping would be needed or not. In the case that it is needed, Proposer should be specific as to the area of the need.
- iii. PS&E Deliverables: The Consultant may not move onto the next phase of design without the approval from the City of the previous submittal.

Description	50% Submittal	90% Submittal	100% Submittal	Final Plans	As Built Plans
Full Size Plans (24"x36")	None	None	None	6 sets	1 set
Project Specifications Hardcopy	None	None	None	2 sets	None
Project Cost Estimate Hardcopy	None	None	None	1 copy	None
Electronic files of PS&E (Adobe PDF, MS Word, MS Excel, AutoCAD in the most current formats)	1 copy	1 copy	1 copy	1 copy	1 copy
Return of City’s Redline Comments of previous submittal (PS&E)	N/A	1 set	1 set	1 set	1 set (if applies)

For the 50%, 90%, and 100% submittals, the Plans, Specifications, and Estimate shall be submitted to the City electronically. For the Final Plans, one (1) wet signed set shall be provided on of 4-mil minimum thickness translucent Mylar film for City Signatures. Consultant shall scan and return the signed Mylar cover sheet together with five (5) copies of the signed plans on 20lb. bright white bond. As-Built plans shall be submitted to the City both electronically and on of 4-mil minimum thickness translucent Mylar film.

The consultant may propose the combining of submittals to meet the project schedule or as a cost saving measure. However, if consultant proposes to combine some of the submittals, they must explain how it would result in savings in terms of the overall PS&E schedule and project costs, as well as how Proposer will ensure the same quality product when compared to the non-combined submittals.

Task 3 – Project Specifications and Cost Estimate:

The Consultant shall prepare the following portions of the construction specifications for all the items listed in the bid schedule and the cost estimate. The City will provide the Proposer with the City's Bid Books template in MS Word electronic file format, in which the Proposer shall complete the following sections to correspond with the construction plans.

- i. Special Provisions
- ii. Bid Item Schedule (also provide in MS Excel electronic file format with calculations)
- iii. Bid Item Descriptions including the measurement and payment for each bid item for the project

The City adopts the Caltrans Standard Specifications as its basic reference. Standard Provisions shall be provided to modify the Standard Specifications as necessary. Any additional Construction Specifications required shall be provided either as Standard Provisions or in the most recent CSI MasterFormat 3-part long form. City will provide the consultant with an electronic copy of the MS Word document for the bid books from a recent project for reference.

The Proposer shall provide the city with a detailed cost estimate and bid item schedule for the work included in this project.

Task 4 – Coordinated Signal Timing Plans:

Consultant shall prepare weekday AM and PM coordinated signal timing plans for the seventeen (17) project intersections. The Proposer shall include in its scope of work the processes that it will follow during the preparation of the coordinated signal timing plans. These may include but need not be limited to field review, data collection, development of the existing conditions Synchro model network, Synchro model calibration, draft signal timing recommendations, final signal timing recommendations, field implementation, fine tuning, and before and after travel time studies.

Consultant shall provide electronic copies and paper copies of the signal timing cards signed by a Licensed Professional Engineer. All timing plans shall be compliant with the latest edition of the California MUTCD and delivered in Adobe PDF and MS Excel electronic file formats.

It is anticipated that timing plans will be reviewed by the City. The City will provide comments and Consultant will address comments. If, in the opinion of the Consultant, any of the comments contradict a standard practice and/or the California MUTCD, then Consultant shall bring the apparent conflict to the attention of the City and be prepared to discuss it with City staff.

- i. Coordinated Signal Timing Plans Deliverables:
 - (1) Calibrated Existing Conditions Synchro Model Network
 - (2) Draft Coordinated Signal Timing Report
 - (3) Final Coordinated Signal Timing Report
 - (4) Before and After Travel Time Studies Report
 - (5) Final Coordinated Signal Timing Plans Signed and Stamped by the Responsible Engineer.

Task 5 – Project Schedule

Consultant shall track and update the project schedule monthly or as needed during the course of work to reflect any necessary changes. The updated project schedule shall be delivered to the City as an attachment to its monthly project invoicing.

- i. Deliverables:
 - (1) Project Schedule shall clearly show all work items listed in the scope of work with durations for completion in a chart format in Microsoft Project. Clearly show the critical path.
 - (2) For purposes of the City's review turn-around times please assume the following:
 - Three weeks for the 50% PS&E
 - Three weeks for the 90% PS&E
 - Two weeks for the 100% PS&E
 - One week for the Final PS&E
 - Three weeks for the Draft Signal Timing Plans
 - Three weeks for the Final Signal Timing Plans
 - (3) The Consultant shall provide updates to the project schedule monthly during the course of work or as needed. The project schedule shall be submitted in hard copy and electronically in PDF format.

Task 6 – ATMS and Engineering Support During Construction

Consultant shall provide Construction Engineering services as needed during the course of bidding and construction. Proposer shall modify this Task in their proposal to provide all required services to achieve City's goals. Examples of required services include but are not limited to:

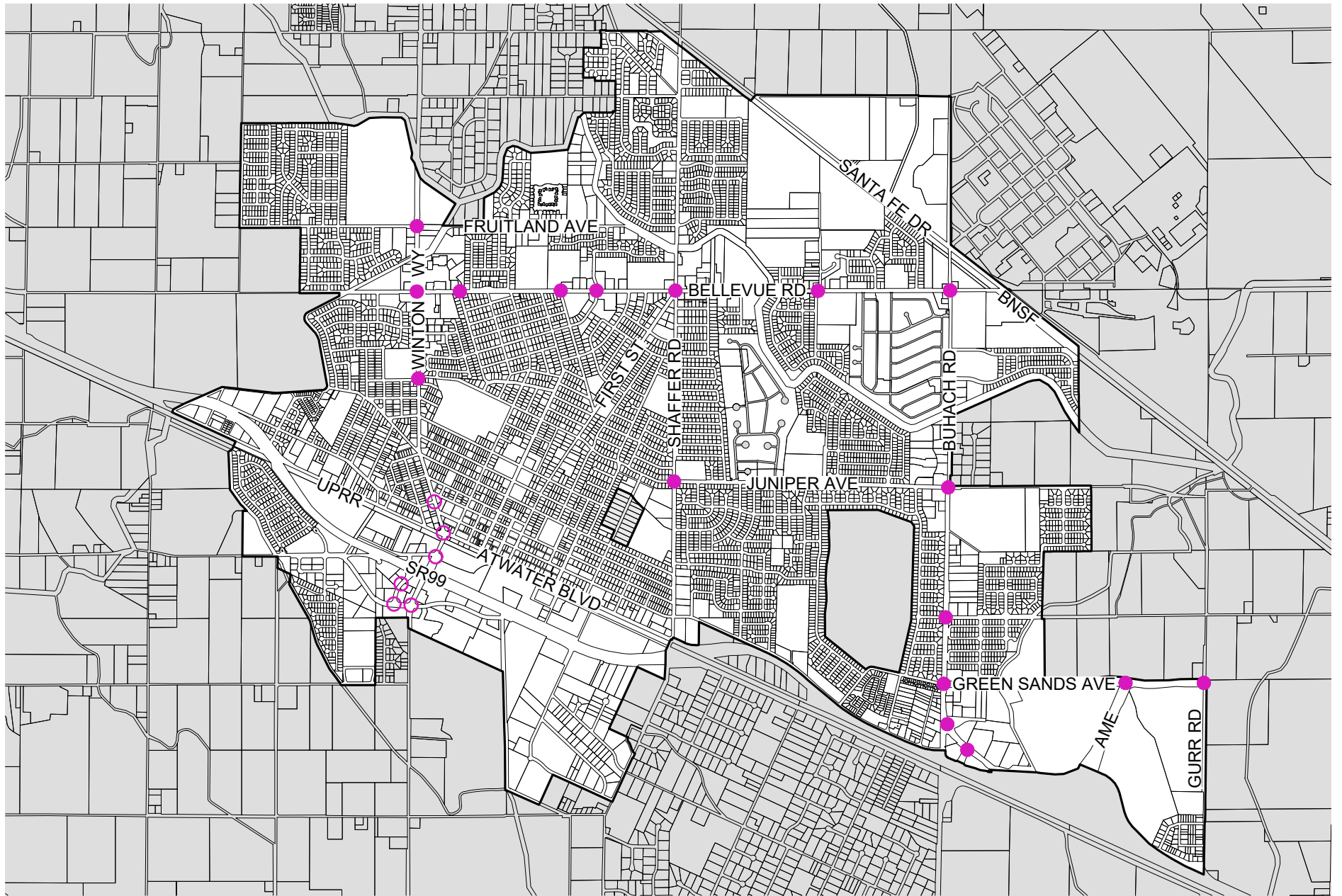
- i. Respond to Requests for Information.
- ii. Review Contractor's Materials Submittals.
- iii. Review Shop Drawings.
- iv. Prepare and issue clarifications and/or revisions to Construction Documents.
- v. Observe and provide inspection of construction activities.
- vi. Verify City's measurements needed to establish pay quantities.
- vii. Provide construction staking (if required).
- viii. Review materials testing results from City's third-party Special Inspection and Testing firm
- ix. Provide System Integration services of all synchronized traffic signals and ATMS software for a fully functional traffic management system/center with all required features and functionality, with services to include but not be limited to:
 - (1) Procure, provide, and support the specified ATMS software for installation on City computers and/or server. If ATMS software is cloud based, then provide coordination and support for installation and configuration for any required client-side software and plugins.
 - (2) Provide startup, configuration, and training for ATMS software.
 - (3) Coordinate the ATMS portion of the project with the construction schedule to avoid project delays.
 - (4) Provide documentation for system Operations and Maintenance.

- x. Prepare punch list at substantial completion of construction activities.
- xi. Prepare Record Drawings (As Built Plans).
 - (1) Refer to Task 2 for specific requirements.

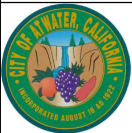
3. APPLICABLE STANDARDS

- a. Environmental standards applicable to this project:
 - i. All environmental documents shall comply with NEPA and CEQA requirements.
- b. Design standards applicable to this project:
 - i. State of California Highway Design Manual, Latest Edition
 - ii. State of California Manual on Uniform Traffic Control Devices (CA MUTCD), Latest Edition
 - iii. City of Atwater Improvement Standards and Specifications for intersections with City or County streets.
 - iv. Caltrans 2023 Standard Plans for items not included in the City Design Standards.
 - v. Any utility relocations required shall follow the individual utility company standards.
- c. Construction standards applicable to the project:
 - i. Local agency standards shall apply to construction outside state right of way.
 - ii. Caltrans 2023 standards shall apply to proposed improvements within existing or proposed Caltrans Right of Way or for those cases not included in the City's Design standards.

SCOPE OF WORK EXHIBIT A



DECEMBER, 2022



CITY OF ATWATER
CDD ENGINEERING DIVISION
750 BELLEVUE ROAD
ATWATER, CA 95301
(209) 357-6340 FAX (209) 357-6363

CITY OF ATWATER
CITYWIDE TRAFFIC SIGNALS
SYNCHRONIZATION PROJECT

LEGEND

- SYNCHRONIZED (NOT A PART)
- PROPOSED FOR SYNCHRONIZATION



Attachment B

Required Forms

The following forms, attached hereto and incorporated herein by this reference, shall be filled out and submitted with the proposal:

1. DIR Registration Certification
2. Consultant Proposal DBE Commitment (Exhibit 10-O1)
3. Disclosure of Lobbying Activities (Exhibit 10-Q)
4. Contractor Cost Certification
5. Specific Rates of Compensation/Cost schedule

The following forms, attached hereto and incorporated herein by this reference, shall be filled once highest ranked Proposer has been notified by the City of Atwater:

1. Consultant Contract DBE Commitment (Exhibit 10-O2)
2. Good Faith Efforts (Exhibit 15-H)
 - A. Offerors must meet the DBE goal of 18.0% contained in this RFP or must evidence Good Faith Efforts to meet the goal. The adequacy of Offeror's Good Faith Efforts shall be determined in City's sole discretion. Offerors are encouraged to submit a completed Good Faith Efforts form even if Offeror is submitting a Consultant DBE Commitment form and believes it has met the DBE goal. Submitting evidence of Good Faith Efforts will protect Offeror's eligibility for award of the contract if City determines that the Offeror failed to meet the DBE goal for various reasons, e.g., a DBE firm was not certified at proposal opening, or the Offeror made a mathematical error.
3. Indirect Cost Rate Showing Allowable and Unallowable Costs per part 31 of the Federal Acquisition Regulation (FAR).
4. Caltrans approval of the proposed ICR.

If Proposer or any of its subcontractors do not have an approved ICR please also submit the following:

 - B. Internal Control Questionnaire (ICQ) for Consulting Engineers
 - C. Payroll Certification along with proof of pay rates for all proposed staff. Proof of pay rate shall be based on the pay rate effective at the time of the notice of this RFP.
 - D. Overtime Work Policy
 - E. Bonus Policy
 - F. Executive Compensation Analysis
 - G. Payroll Summary of Proposed Staff
 - H. Trail Balance on an Accrual Basis for Period covered by the ICR
 - I. Income Statement on an Accrual Basis for the period covered by the ICR

**REQUIRED FORM - DIR REGISTRATION
CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to propose on, be listed in a proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No proposal will be accepted, nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. This requirement will apply to all work under this RFP that is subject to the prevailing wage requirements set forth in Labor Code section 1720, et. seq., ("Prevailing Wage Work") and to proposer and any subcontractor proposed to perform such work.

Proposer hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Proposer: _____

DIR Registration Number: _____

*Name of Proposed Subcontractor: _____

DIR Registration Number: _____

*Include additional sheets as necessary to list additional proposed subcontractors who will perform Prevailing Wage Work, and DIR registration numbers.

Proposer further acknowledges:

1. Proposer shall maintain a current DIR registration for the duration of the project.
2. Proposer shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract(s) with subcontractors engaged to perform any Prevailing Wage Work and shall ensure that all such subcontractors are registered at the time of proposal opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the proposal is non-responsive.

Signature: _____

Name and Title: _____

Dated: _____

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of _____

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 Disadvantaged Business Enterprise;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on [Access to the DBE Query Form](#) located on the first line in the center of the page.

Searches 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 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	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ _____ Consultant's Ranking after Evaluation: _____ 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. _____ 12. Preparer's Signature 13. Date _____ 14. Preparer's Name 15. Phone _____ 16. Preparer's Title		
_____ 21. Local Agency Representative's Signature 22. Date			
_____ 23. Local Agency Representative's Name 24. Phone			
_____ 25. Local Agency Representative's Title			

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 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 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-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year ____ quarter ____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p>	
<p>10. Name and Address of Lobby Entity (If individual, last name, first name, MI)</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>	<p>11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI)</p>	
<p>12. Amount of Payment (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>14. Type of Payment (check all that apply)</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____</p>	
<p>13. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____</p>		
<p>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>		
<p>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p>		
<p>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Authorized for Local Reproduction Standard Form - LLL</p>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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



Inspector General

California Department of Transportation

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 (ICR):

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 ICR was developed (not the contract period). The ICR 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 ICR(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 ICR(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 the Financial Document Review Request form.

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 requirements.

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 _____
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit	Local Govt ICR Audit	Caltrans ICR Audit
CPA ICR Audit	Federal Govt ICR Audit	

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR 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: _____

Phone**:

Email**:

**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 forms. Caltrans will not process local agency’s invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.

SAMPLE COST PROPOSAL 1

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
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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

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:

- 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. 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.
- Anticipated salary increases calculation (page 2) must accompany.

SAMPLE COST PROPOSAL 1
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	500		\$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	100%		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:

1. 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
2. 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)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

SAMPLE COST PROPOSAL 1

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:

SAMPLE COST PROPOSAL 2

**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. _____ **Contract 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	= %

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)

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-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: _____			%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			14. TOTAL CLAIMED DBE PARTICIPATION
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 Signature		_____ 24. Date	_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name		_____ 26. Phone	_____ 16. Date
_____ 27. Local Agency Representative's Title			_____ 17. Preparer's Name
			_____ 18. Phone
			_____ 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 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 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 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date _____ PE/CE

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

The _____ 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

- 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:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:

SAMPLE COST PROPOSAL 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:

- 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:

--

Attachment C

Draft Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF ATWATER AND [REDACTED] (PROFESSIONAL)**

THIS AGREEMENT for professional services is made by and between the City of Atwater, a California municipal corporation ("City") and [REDACTED], a [REDACTED], ("Professional") as of [REDACTED], 20XX (the "Effective Date"). City and Professional shall be referred to herein separately as a "Party" and collectively as "Parties."

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and the Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on [REDACTED], the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.
- 1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons. All personnel, including those reassigned at City's request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement, or any part of it, unless such subcontracting is expressly approved by City in writing.
- 1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Professional a sum not to exceed [REDACTED], notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event

of a conflict between this Agreement and Professional's fee schedule regarding the amount of compensation, attached as Exhibit B, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Professional shall not bill City for duplicate services performed by more than one person.

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

2.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs, if any, incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder;
- The Professional's signature; and
- Professional shall give separate notice to the City when the total number of hours worked by Professional and any one individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete work described in Exhibit A, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

- 2.3 Final Payment.** City shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses, if any, are set forth in Exhibit B, and shall not exceed [REDACTED] (\$ [REDACTED]). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator, as defined in Section 11.9.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this Section, and only under the terms and conditions set forth herein.

City may furnish, at its sole discretion, physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that

may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Professional, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Professional shall provide proof satisfactory to the City of such insurance that meets the requirements of this Section and under forms of insurance satisfactory in all respects and that such insurance is in effect prior to beginning work to the City. Professional shall maintain the insurance policies required by this Section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to the City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability

insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured’s general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

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

4.3 Professional Liability Insurance.

4.3.1 General requirements. Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim. An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.2 Claims-made form. The following provisions shall also apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must purchase an extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work under this Agreement, whichever is later.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance evidencing required policies delivered to Professional by the insurer, including complete copies of all endorsements attached to those certificates. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to

bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Professional beginning work, it shall not waive the Professional's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

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

4.4.5 Wasting Policies. Except for Professional Liability insurance policy, no policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.6 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Professional agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.5 Remedies. In addition to any other remedies the City may have if Professional fails to provide or maintain any insurance policies, or policy endorsements, to the extent and within the time herein required, the City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies the City may have and are not the exclusive remedy for Professional's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment until Professional demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

- 5.1 General Requirement.** Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 PERS Indemnification.** In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 5.3 Design Professionals.** To the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify under Sections 5.1 and 5.2 shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 6. STATUS OF PROFESSIONAL.

6.1 Independent Contractor. At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 1.3; however, otherwise City shall not have the right to control the means by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

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

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

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional, and any subcontractors, shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.

7.5 **Nondiscrimination and Equal Opportunity.** Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.

Professional shall include the provisions of this Section in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

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

Professional may cancel this Agreement upon [REDACTED] days' prior written notice to City and shall include in such notice the reasons for cancellation.

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

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this

Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.

8.6 Options upon Breach by Professional. If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the services required by this Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;

8.6.3 Retain a different professional to complete the work described in Exhibit A not finished by Professional; or

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

Section 9. Confidentiality. Professional understands and agrees that, in the performance of services under this Agreement or in the contemplation thereof, Professional may have access to confidential information or other materials exempt from public disclosure, and that such information may contain sensitive or confidential data, the disclosure of which to third parties may be damaging to City ("Confidential Information") or any third party. Professional shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Professional written

authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 10.2 Professional's Books and Records.** Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional to this Agreement.
- 10.3 Inspection and Audit of Records.** Any records or documents that Section 10.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 11. MISCELLANEOUS PROVISIONS.

- 11.1 Attorneys' Fees and Costs.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.2 Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Merced or in the United States District Court, Eastern District of California.

- 11.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 11.6 **Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 11.7 **Conflict of Interest.** Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code section 81000 et seq.

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

Professional hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 11.8 **Solicitation.** Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 11.9 **Contract Administration.** This Agreement shall be administered by [REDACTED] ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

11.10 **Notices.** Any written notice to Professional shall be sent to:

[Redacted]

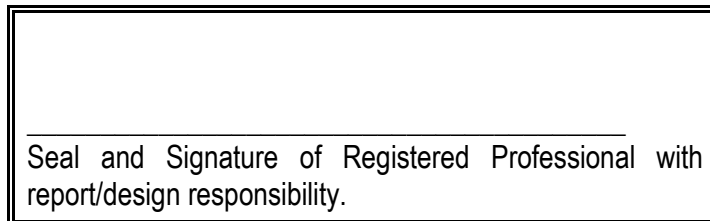
Email Address (for Insurance Update Requests)

[Redacted]

Any written notice to City shall be sent to:

[Redacted]

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



11.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the fee schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.

11.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

11.14 **Time is of the Essence.** Time is of the essence in this Agreement for each covenant and term of a condition herein.

11.15 **Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with.

- 11.16 **Drafting and Ambiguities.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.
- 11.17 **Headings.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.
- 11.18 **IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

[signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY

PROFESSIONAL

Lori Waterman, City Manager

[NAME, TITLE]

Attest:

Lucy Armstrong, City Clerk

Approved as to Form:

Frank Splendorio, City Attorney

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
FEE SCHEDULE

Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE

(For Local Assistance Federal-Aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS AGREEMENT LANGUAGE IS RECOMMENDED LANGUAGE, EXCEPT ARTICLE XXXII TITLE VI ASSURANCES (APPENDICES A AND E MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT AND APPENDICES B-D MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT INVOLVING RIGHT OF WAY ACQUISITION). MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

THIS EXHIBIT CONTAINS FISCAL REQUIREMENTS FROM 2 CFR 200 AND IS TO BE USED FOR STATE-ONLY FUNDED CONTRACTS AS WELL.

[Note: italic text within brackets throughout the Articles is intended for instructional purposes only]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I INTRODUCTION	3
ARTICLE II CONSULTANT'S REPORTS OR MEETINGS.....	4
ARTICLE III STATEMENT OF WORK	4
ARTICLE IV PERFORMANCE PERIOD.....	6
ARTICLE V ALLOWABLE COSTS AND PAYMENTS.....	6
ARTICLE VI TERMINATION	10
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.....	11
ARTICLE VIII RETENTION OF RECORD/AUDITS	11
ARTICLE IX AUDIT REVIEW PROCEDURES	12
ARTICLE X SUBCONTRACTING	13
ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES	15
ARTICLE XII STATE PREVAILING WAGE RATES.....	16
ARTICLE XIII CONFLICT OF INTEREST.....	19
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION	19
ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING	20
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE.....	20
ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION.....	21
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION.....	22
ARTICLE XIX INSURANCE	28
ARTICLE XX FUNDING REQUIREMENTS.....	29
ARTICLE XXI CHANGE IN TERMS	29

ARTICLE XXII CONTINGENT FEE 29

ARTICLE XXIII DISPUTES..... 30

ARTICLE XXIV INSPECTION OF WORK 30

ARTICLE XXV SAFETY 30

ARTICLE XXVI OWNERSHIP OF DATA..... 31

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY’s CONSTRUCTION CONTRACTOR..... 31

ARTICLE XXVIII CONFIDENTIALITY OF DATA..... 32

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION..... 32

ARTICLE XXX EVALUATION OF CONSULTANT 33

ARTICLE XXXI PROMPT PAYMENT..... 33

ARTICLE XXXII TITLE VI ASSURANCES 33

ARTICLE XXXIII NOTIFICATION 38

ARTICLE XXXIV CONTRACT 38

ARTICLE XXXV SIGNATURES 39

ARTICLE I INTRODUCTION

- A. This AGREEMENT is between the following named, hereinafter referred to as, 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:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. 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.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. 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.
- H. 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.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. 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 II CONSULTANT'S REPORTS OR MEETINGS

[Choose either Option 1 or Option 2]

[Option 1 - Use paragraphs A & B below for standard AGREEMENTs]

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

[Option 2 - Use paragraphs A & B below for on-call AGREEMENTs]

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III STATEMENT OF WORK

[Insert Appropriate Statement of work including a Description of the Deliverables in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."]

- A. CONSULTANT Services
[Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent

uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see [LAPM Chapter 6: Environmental Procedures](#), and the Standard Environmental Reference).]

B. Right of Way

[State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.]

C. Surveys

[State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.]

D. Subsurface Investigations

[State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.]

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

[For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.]

H. CONSULTANT Services During Construction

The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.

I. Documentation and Schedules

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

J. Deliverables and Number of Copies

The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.

ARTICLE IV PERFORMANCE PERIOD

[A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.]

A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

[Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTs. On-call AGREEMENTs shall be 5 years maximum.]

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

[Choose either Option 1, 2, 3, or 4]

[Option 1 - Use paragraphs A through K below for Cost-Plus-Fixed Fee AGREEMENTs]

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 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 Article III Statement of Work, 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 including any equipment purchased under the provisions of Article XI Equipment Purchase. 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:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- 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.

[Option 2 - For Cost per Unit of Work AGREEMENTs, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project].

- 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

Article III Statement of Work, 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 "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

[Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements (such as on-call Agreements). This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTs or components of AGREEMENTs for specialized or support type services where the CONSULTANT is not in direct control of the number of hours worked, such as construction engineering and inspection.]

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. *[Local Agency to include either (a) or (b) below; delete the other one]*
- (a) Reimbursement for transportation and subsistence costs shall not exceed State rates.
 - (b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:
- (NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)
- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

[Option 4 - Use paragraphs A through E below for lump sum agreements.]

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. 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 in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days 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, on 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 that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- E. The total amount payable by LOCAL AGENCY shall not exceed \$(Amount).

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY 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. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY 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 LOCAL AGENCY 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, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY 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.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR 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 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 31 or 2 CFR 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 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 and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. 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.

ARTICLE IX AUDIT REVIEW PROCEDURES

- 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 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

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

[Choose either Method 1, Method 2, or Method 3 below and delete the other two.]

Method 1: 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.

Method 2: No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. 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 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.

Method 3: The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. 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 XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

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 CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the 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

[Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.]

- 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.
- 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 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.

- D. 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.
- 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 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.
- I. 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 XVII 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 agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal 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.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

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 (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 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 _____%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-02: 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: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 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 [Replacement](#) 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 [replace](#) 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.

[Termination of DBE Subconsultants](#)

[After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:](#)

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 or exhibits credit unworthiness.
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 must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
 - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Description of scope of work and cost proposal

- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
 - Solicitations of DBEs for performance of work identified
 - Correspondence with interested DBEs that may have included contract details and requirements
 - Negotiation efforts with DBEs that reflect why an agreement was not reached
 - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
 - Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
 - Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

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 Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change 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. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a 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.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY

these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- 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. For projects awarded on or after March 1, 2020, but before September 1, 2023: 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 must complete and email Exhibit 9-F: [Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov](#) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

[Choose either Option 1 or Option 2]

[Option 1 - for AGREEMENT with a scope of services that may require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations.]

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

[Option 2 - for AGREEMENTs with a scope of services that will not require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way where there would be exposure to public traffic or construction CONSULTANT operations.]

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

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 XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

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.

[Choose either Option 1 or Option 2]

[Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal]

- 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.

[Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E]

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, 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.

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.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

[Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper]

- 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.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

[For PS&E contracts add paragraph F, below, to paragraphs A through E, above]

- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

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

A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

B. PROMPT PAYMENT CERTIFICATION

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

ARTICLE XXXII TITLE VI ASSURANCES

APPENDICES A - E of the TITLE VI ASSURANCES

[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C
CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D
CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE
ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on,

over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of

public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

ARTICLE XXXIII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

_____ (CONSULTANT)

_____ (NAME) _____, Project Manager

_____ (ADDRESS)

LOCAL AGENCY:

_____ (LOCAL AGENCY)

_____ (NAME) _____, Contract Administrator

_____ (ADDRESS)

ARTICLE XXXIV CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXV SIGNATURES

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

(Signature)

(Name of Signer)

(Signature)

(Name of Signer)

Date: _____

Date: _____