


REQUEST FOR PROPOSALS (RFP)
FOR
VARIOUS ENVIRONMENTAL SERVICES
RFP NO.: 18-043



CITY OF SANTA ANA
Santa Ana Public Works Agency
20 Civic Center Plaza
Santa Ana, CA 92701

Kenny Nguyen
Project Manager
(714) 647-5632 Office
knguyen@santa-ana.org

Approved for Release:


Jason Gabriel
Principal Civil Engineer
Public Works Agency

KEY RFP DATES (Subject to change at discretion of City):

Issue Date:	Tuesday, May 8, 2018
Letter of Intent:	Wednesday, May 16, 2018
Deadline for Requests for Information:	Tuesday, May 29, 2018
Proposal Due Date:	Tuesday, June 5, 2018; 4:00pm
Anticipated Projected Award Date:	Tuesday, July 17, 2018



NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for Various Environmental Services.

Responses to this Request for Proposals (RFP) will be accepted until **Tuesday, June 5, 2018 at 4:00 p.m.** Proposals received after this date/time will not be considered. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Santa Ana prior to this proposal due date and time.

Proposals shall be enclosed in a sealed envelope and marked clearly with following information, formatted as follows:

“SEALED PROPOSAL FOR
VARIOUS ENVIRONMENTAL SERVICES
RFP NO. 18-043
IN THE CITY OF SANTA ANA
DO NOT OPEN WITH REGULAR MAIL.”

City of Santa Ana
Attn.: Kenny Kgyuen
Public Works Agency;
20 Civic Center Plaza; 3rd Floor Reception, Ross Annex
Santa Ana, CA 92701

Proposals shall be mailed, hand delivered, or sent by courier service.
Proposals shall NOT be sent via telegraphic, electronic or facsimile.

All notifications, updates and addenda will be posted on PlanetBids and the City’s RFP Bid page at www.santa-ana.org/bids-rfps. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.

LETTER OF INTENT - Interested firms shall submit a Letter of Intent of their pending proposal to the noted Project Manager by the required date as shown on the cover page of this RFP. Letters shall be forwarded via certified mail or email and shall include the following information:

1. Use formal company letterhead.
2. Indication of company interest in the RFP.
3. Acknowledgement of candidate's responsibility to monitor the City's website for any amendments or modifications to the RFP.
4. Provision of correct, complete contact information.



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I. INTRODUCTION / PROJECT DESCRIPTION

Nature of Work:

The City of Santa Ana is seeking on-call environmental services. A detailed Scope of Work is included in the Appendix of this RFP as Attachment 1.

Number of Proposals and Signature:

Five (5) hard copies and one (1) digital file on labeled USB Flash Drive (or equivalent). One of the hard copies shall be marked as "ORIGINAL" and shall be signed by a company official with the power to bind the company and submitted to the City of Santa Ana. One (1) copy of your Fee Proposal shall be submitted.

The Statement of Qualifications shall be limited to a maximum of (10) double-sided pages (excluding front and back covers, section dividers and attachments such as resumes, forms). Font size shall be minimum 11-point Arial. Proposal exhibits shall be maximum 11" x 17".

Proposal Evaluation and Rating:

The criteria for evaluating the proposals submitted will take the following items into consideration:

- Firm/Team Experience 30%
- Understanding of Need 25%
- Relevant Project Experience 25%
- References 5%
- Fee 15%

The City has established a proposal review committee to evaluate proposers based on the response to the RFP, which includes adherence to outlined directions and format, and the City evaluation criteria set forth above. A final score will be calculated for each submitted proposal and used to rank the proposers.

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



Project Funding:

Funding sources for each project may vary for each project/task order assignment. Special conditions may apply. Refer to Attachments 1 (Scope of Work) in the Appendix of this RFP.

Prevailing Wages:

In accordance with the California State Labor Code, prevailing wage rates apply. Copies of the prevailing rate of per diem wages are on file with the Public Works Agency and shall be made available to any interested party on request.

Term of Contract Agreement:

The City desires to enter into a contract with the selected firm for an initial three year term with a City option for two, one year extensions. This term is outlined in the sample Standard Consultant Agreement, as contained in the Appendix of this RFP as Attachment 2.



II. INSTRUCTIONS TO PROPOSERS

A. CITY RESPONSIBILITIES

The City will provide information in its possession relevant to preparation of required information in RFP. The City will provide only the staff assistance and documentation specifically referred to herein.

B. PROPOSER RESPONSIBILITIES

Point of Contact: The selected proposer will assume responsibilities for all services in its proposal. The selected proposer shall identify a sole point of contact with the greatest knowledge in regard to the required service operations and contractual matters, including payment of any and all charges resulting from the Agreement.

Evidence of Financial Capacity: Proposer may be requested to submit its most recent audited financial statement, evidencing proposer's financial capacity to fully perform the required services, including provision of equipment and personnel expenses over a ninety (90) day period. If said financial statement does not reflect full ninety (90) day operational capacity, proposer may include a letter of credit as evidence of supplemental capacity.

C. REQUEST FOR INFORMATION OR CLARIFICATION

All questions or requested clarifications shall be made in writing via e-mail to the Project Manager (contact information as noted on the cover page to this RFP) no fewer than five (5) calendar days prior to the date and time set for opening of proposals. No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP.

D. ADDENDA

Any changes in RFP from the date of release to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment shall be posted on City's website, santa-ana.org/bids-rfps as set forth in the Notice Inviting Proposals. Addenda shall become part of the agreement documents.

E. LICENSES & PERMITS

The selected proposer shall be required to obtain a City of Santa Ana Business license within ten (10) business days of selection and must provide a copy to the City projects manager or designee prior to commencing any work in Santa Ana.

Additionally, Proposer will be responsible for obtaining any licenses/permits required by the Scope of Work.

F. INSURANCE

The Selected Proposer shall provide the required evidence of insurance coverage as set forth in the Scope of Work within ten (10) business days after receipt of notice that the contract has been awarded. Failure to provide the required insurance certificates shall be cause for the annulment of the award and the forfeiture of the proposal guaranty.



G. PAYMENT INFORMATION PACKET

The selected proposer shall return a completed payment information packet within ten (10) business days after the successful proposer has received notice that the contract has been awarded. The packet is available on the City's website: santa-ana.org/bids-rfps.

H. PRE-PROPOSAL MEETING

Should a pre-proposal be scheduled, the date, time and location is identified on the cover page of this RFP. The meeting will include discussion of the project scope and a question-and-answer session. It is highly recommended that the Proposer's key team members attend this meeting. Significant interpretations or clarifications will be addressed via addenda to this RFP, as described above in "Section D: Addenda."

I. CITY RIGHT TO REJECT

The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any minor inconsistency, informality or technical defect in the proposal.

The City reserves the right to reject, replace and approve any and all subcontractors. All subcontractor(s) shall be identified in the response to the RFP. Subcontractors shall be the responsibility of the successful proposer and the City shall assume no liability of such subcontractors.

J. BID PROTESTS

Proposers with concerns or rebuttal of any staff determination of non-responsiveness or non-responsibility may submit, in writing within five (5) business days, to the Project Manager, any concerns regarding the RFP process or staff determination. Such writing shall be considered by the City Manager or his designated representative, and may be acted upon within five (5) business days. If no action is taken within such time, there shall be no change to the staff determination. The exercise by Proposer of its right to submit written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.



III. SUBMITTAL REQUIREMENTS

A. GENERAL

I. The number of Proposal Copies and signature is specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

II. Deadline:

Proposals are due to the City of Santa Ana at the date, time, and location specified in the Notice Inviting Proposals.

B. PROPOSAL CONTENTS

The proposal format and page limitation, if any, is specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

1. STATEMENT OF QUALIFICATIONS

- a. Cover Letter – Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
- b. Contract Agreement Statement: Proposal shall include a statement outlining your concurrence or concerns with any and all provisions as contained in the Agreement attached herein as Attachment 2 in the Appendix.
- c. Firm and Team Experience: Proposal shall include a profile of the firm's experience. Include resumes of project team/sub-consultants that will be providing services which outline their technical and design experience. At a minimum, this should include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, firm size, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual's time devoted to this project. The project manager/principal agent shall be the primary contact person to represent your firm and will be the person to conduct the presentation, if invited for an interview.
- d. Understanding of Need: Proposal shall include an outline which demonstrates the firm's understanding of the work. This outline should include anticipated approach, tasks necessary for successful completion, deliverables, and suggestions or special concerns that the City should be made aware of. Identify any assumptions and/or exclusions used in preparation of the scope of work and associated fee estimate.
- e. Relevant Project Experience: Proposal shall include a list of projects which your firm or personnel have completed within the last 5 years, including significant work with public agencies. Project information should include project description, year completed, client name, along with a person to contact and their telephone number.



f. References: Proposal shall include a listing of relevant projects with references for three public entities for which Proposer has performed similar work within the past five (5) years.

2. SCOPE OF SERVICES AND SCHEDULE:

Proposal shall include a Scope of Services and Schedule which details the work phases to be completed, the tasks to be accomplished, the deliverables to be provided, and the schedule / timeline to complete the project, based upon the requested Scope of Work detailed in Attachment 1 of this RFP.

3. FEE PROPOSAL:

The fee proposal shall be submitted concurrently with the technical proposal, but in a separately sealed envelope, clearly labeled as "Fee Proposal." This shall include the firm's Standard Hourly Fee Schedule, a table outlining the tasks and team hourly effort for each of the major tasks, and a Project Fee Schedule as outlined in the Scope of Work.

The fee proposal will not be opened until the proposals have been evaluated by the proposal selection committee. The City will select the consultant based on qualifications, and then negotiate a contract price based on available funding.

4. CERTIFICATIONS:

The following forms shall be signed and included as part of the proposal submittal package:

- Attachment 3-1: Non-Collusion Affidavit
- Attachment 3-2: Non-Lobbying Certification
- Attachment 3-3: Non-Discrimination Certification

IV. PROPOSAL REVIEW (CONSULTANT SELECTION)

A. EVALUATION AND RATING

The criteria for evaluating the proposals are specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

B. SELECTION

The committee may interview the top ranking proposers. The City will recommend award of the contract to the proposer who will provide the best value to the City. City reserves the right to begin negotiations and enter into a contract without interview or further discussions.

V. CONTRACT AWARD

A. REQUEST FOR COUNCIL ACTION



Following evaluation and rating by the proposal review committee, the Project Manager will recommend award of a contract to the proposer providing the best value to the City.

B. EXECUTION OF AGREEMENT

The Scope of Services, Schedule, and Fees submitted in the proposal will be the basis of any negotiation of final terms which will lead to a completed agreement ready for execution based on the standard Agreement attached herein as Attachment 2 in the Appendix.

VI. IMPLEMENTATION

A. KICK-OFF MEETING

A kick-off meeting will be held after award of contract. Consultant and its team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation process.

B. NOTICE TO PROCEED

Following the kick-off meeting, a formal Notice to Proceed (NTP) may be issued after the agreement is fully executed, and all required bonds, insurance documents and contents of the Information Packet have been received and approved.

For “On-Call” contracts, Consultant will be notified by individual City Project Managers on a case-by-case basis to request project/task specific proposals. Written NTPs will be then issued accordingly.

VII. PUBLIC RECORDS

All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

Proposals will become public record after award of contract. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

**Appendix
ATTACHMENT 1
SCOPE OF WORK**

**CITY OF SANTA ANA
REQUEST FOR PROPOSALS
FOR
VARIOUS ENVIRONMENTAL SERVICES
RFP NO.: 18-043**

Introduction and Background:

The City of Santa Ana Public Works Agency (City) is issuing this Request for Proposals (RFP) to seek qualified On-Call consultants firms (consultants) to perform Phases I and II Environmental Site Assessment (ESA), pre-demolition survey for hazardous and contaminated building and site, and prepare the necessary reports on an as-needed basis.

The City’s goal is to enter into agreements with one or more firms with specific expertise in the areas listed below. The total amount to be expended shall be shared among all consultants providing these services.

The services being considered for contract are the following “specialty areas”:

<u>Specialty Areas</u>		<u>Maximum Contract Aggregate Amount</u>
(A1)	Environmental Site Assessment	\$135,000
(A2)	Hazardous Materials Surveys	\$135,000

Consultants are encouraged to prepare proposals for multiple specialty areas listed above. Each Specialty Area shall be submitted individually in response to the RFP. From the proposals received, it is the City’s goal to select one to two firms for each of the specialty services (A1 and A2). The City will enter into separate agreements (the “Agreement”) with each of these firms. Work will be assigned by Contract Task Orders. As tasks are identified, they will be distributed among these firms based upon their ability to perform the required work within the project schedule and budget constraints. Detailed scope of work and the fee will be outlined when a specific task is assigned to a consultant. The City reserves the right to distribute the work in any manner which will best serve the City’s interests.

Minimum Qualifications:

Consultant shall have an office in Southern California and employ personnel qualified by training and experience to provide the building and property survey described herein.

Description of Work:

Consultants under contract with the City of Santa Ana will provide support to City of Santa Ana staff or their designee on an as-needed basis. The Consultants shall be thoroughly familiar with

the Statement of Work prior to submitting a response to this Request for Proposal (RFP).

- The Consultant shall perform work to produce a high quality, professional and complete work product.
- Consultant must have experience with State and Federally funded projects. All work shall be performed in conformance with all applicable regulations, policies, procedures and standards.
- Work may include, but not be limited to, the following: field exploration of the project area; review of existing records; conducting research and pre-demolition surveys and performing analysis; information gathering; collecting site samples; lab testing and evaluating for the potential presence and extent of contaminants / hazardous materials; preparing reports documenting all sampling activities, analytical results and recommendations for future action; and providing cost estimates for the recommended actions.
- The Consultant shall carry out the instructions received from the City and shall cooperate with the City and other agencies.
- The Consultant has total responsibility for the accuracy and completeness of the work produced. The work will be reviewed by the City for conformity with the requirements of the Agreement. Reviews by the City may NOT include a detailed review for the accuracy of items submitted. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.
- The Consultant shall be responsible for coordination and supervision of all work performed by its sub-consultants. The Consultant shall review all work performed by its sub-consultants and the responsibility for accuracy and completeness of work performed remains solely that of Consultant. Sub-consultant markup is not allowed in this contract.
- The Consultant shall have a Quality Control Plan in effect during the entire time work is being performed under the Agreement. The Quality Control Plan shall establish a process whereby work products are independently checked, corrected and back checked. All projects related correspondences and documents shall be maintained and bound in appropriate project files. Additionally, all electronic files shall conform to the City's file naming system.
- The Consultant shall diligently work on each assignment and complete each task in accordance with the schedule and accommodate the City's needs.
- The Consultant's work will be subject to inspection and audit by City, County, State and Federal representatives.
- The Consultant will receive written notification of the award of the contract. Upon such notification, the Consultant will proceed with the services required by the Agreement.

(A1) ENVIRONMENTAL SITE ASSESSMENT

Phase I Environmental Site Assessment

Consultant shall conduct Phase I ESA in compliance with the current standard practices of the American Society for Testing and Materials (ASTM) Standard E1527. These tasks shall include but not limited to:

- Investigate the historical uses of the project site by examining available historical aerial photographs, topographic maps, Environmental Data Resources (EDR radius shall be at least one mile from the project limits) and other available documentation for evidence of potential environmental concerns (both surface and subsurface) associated with prior land uses.
- Interview the current and former owners and occupants of the properties and other knowledgeable persons (including adjacent residents/occupants, as well as applicable local government officials) to identify historical operations conducted on the project site and adjacent properties.
- Research and investigate area for geology and subsurface/surface potential for pollutant transport from public sources.
- Prepare Phase I ESA report detailing the findings through inspections and interviews, site characteristics, record and historical review information and potential contamination issue, interpretation of the findings and recommendations for any work required.

Phase II Environmental Site Assessment

Consultant shall conduct Phase I ESA in compliance with the current standard practices of the American Society for Testing and Materials (ASTM) Standard E1527. These tasks shall include but not limited to:

- Collect soil and water samples of the project site.
- Conduct subsurface soil borings.
- Perform geophysical testing for buried/underground storage tanks and drums.
- Install groundwater monitoring well and analyze the presence of contamination. Depending on the results of the samples, additional site investigation and potential remedial actions may be required.
- Prepare Phase II ESA report detailing the compilation and analysis of the data collected, interpretation of the findings and recommendations for any work required.
- Coordinate with local government officials and/or contractor to conduct the necessary sample collection, submit the required forms/reports and obtain the complete hazardous closure certification.

(A2) HAZARDOUS MATERIALS SURVEYS

Pre-demolition Hazardous Materials Surveys

Consultant shall perform pre-demolition survey for hazardous and contaminated building materials. These tasks shall include but not limited to:

- Perform the necessary hazardous materials survey (including but not limited Asbestos and Lead Based Paint) and collect bulk samples to identify and quantify all potential hazardous, contaminated, or other materials, including materials and abandoned or waste materials, which may be regulated or otherwise require special consideration or disposal arrangements during, or prior to, demolition of the building.
- Prepare the Asbestos-Containing Materials (ACM), Lead Based Paint (LBP), Universal Waste and any other necessary survey reports to comply with State and Federal requirements.

Consultant Responsibilities:

Sample Fee Proposal

Consultant shall submit a fee proposal as described below in a sealed fee envelope. The proposal will be used for fee comparison and evaluation purposes. Furthermore, this fee proposal will become part of Exhibit B of the Contract Agreement and will be used to compare with an actual work request.

- Sample locations for fee proposals are:
 - 2246 Orange Ave (n/w corner of Warner/Orange)
 - 2245 S. Main Street (Arco Gas Station)
 - Provide brief description of methods of inspection, sample collection and lab analysis, report sections, and any other necessary tasks.

Fee Proposal:

Proposers shall comply with all requirements as they pertain to the use of federal or state awarded funds. Refer to Attachment 4 for Caltrans additional provisions and forms, including Exhibit **10-H – Sample Cost Proposal** in the Appendix of this RFP and also available by referencing Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 online.

Consultant Audit and Review Process:

Prior to awarding the contract(s), the selected Consultant(s) shall be subject to an audit or review by Caltrans' Audits and Investigations (A&I), other state audit organizations, or the federal government. The selected Consultant shall complete Exhibit **10-K – Consultant Certification of Contract Costs and Financial Management System**, in the Appendix of this RFP as Attachment 4 and also available by referencing Caltrans LAPM Chapter 10 online.

Disadvantaged Business Enterprises (DBE) Goal Encouragement:

The Agency will establish a DBE goal for this Contract if the project/task funding ever utilizes federal funds. Proposers are encouraged to obtain DBE participation for this contract. Refer to **Exhibit 10-I – Notice to Proposers DBE Information** and **Exhibit 10-O1: Consultant Proposal DBE Commitment** included in the Appendix of this RFP and also available by referencing Caltrans LAMP Chapter 10 online.

**Appendix
ATTACHMENT 2
STANDARD AGREEMENT**

**CONSULTANT AGREEMENT
CITY OF SANTA ANA**

THIS AGREEMENT is made and entered into this _____ day of _____, 2018 by and between _____, (“Consultant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

RECITALS

A. The City desires to retain a consultant having special skill and knowledge in the field of:

various environmental services to perform Phases I and II Environmental Site Assessment, pre-demolition survey for hazardous and contaminated building and site, and prepare the necessary reports on an as-needed basis.

B. Consultant represents that Consultant is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Scope of Services - Exhibit A**, attached hereto and incorporated by reference.

2. COMPENSATION

a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Compensation - Exhibit B**. The total amount to be expended under this Agreement shall not exceed \$xxxxxx during the term of this Agreement, including any extension periods exercised under Section 3.

- b. Payment by City shall be made within 45 days (forty-five) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

3. TERM

This Agreement shall commence on [enter a Start Date or “the date first written above”] for a **number (#) year term** with the option for the City to grant up to a **number (#)-year** renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 16, below.

4. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed are part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

5. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

6. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not

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

7. INSURANCE

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

- a. Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- e. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:
 - i. Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
 - ii. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
 - iii. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
 - iv. Consultant shall supply City with a fully executed additional insured endorsement.

- f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

8. INDEMNIFICATION

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

9. INTELLECTUAL PROPERTY INDEMNIFICATION

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

10. RECORDS

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours.

Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

11. CONFIDENTIALITY

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

12. CONFLICT OF INTEREST CLAUSE

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services. Conflict may be further specified in **Certifications - Exhibit C**, attached hereto and incorporated in this Agreement by reference.

13. DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations and as further specified in **Certifications - Exhibit C**, attached hereto and incorporated in this Agreement by reference.

14. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or

otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

15. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

16. TERMINATION

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

17. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. MISCELLANEOUS PROVISIONS

- a. Additional provisions, if any, are identified as Additional Provisions, **Exhibit D**, attached hereto and incorporated into this Agreement by reference. No Exhibit D is attached in the absence of additional provisions.
- b. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- c. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

21. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

William Galvez, P.E. Executive Director, Public Works Agency City of Santa Ana 20 Civic Center Plaza (M-21) P.O. Box 1988 Santa Ana, California 92702 Fax: 714- 647-5635	Sonia R. Carvalho City Attorney City of Santa Ana 20 Civic Center Plaza (M-29) P.O. Box 1988 Santa Ana, California 92702 Fax: 714- 647-6515
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To Consultant:

First & Last Name Title Consultant Firm Name Address City, State, Zip Fax:

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

Maria D. Huizar
Clerk of the Council

Raul Godinez II
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONSULTANT:

By: _____
John Funk
Assistant City Attorney

_____ (name) (title) Tax ID# _____

RECOMMENDED FOR APPROVAL:

EDWIN "WILLIAM" GALVEZ
Acting Executive Director
Public Works Agency

Rev. 9-20-2017

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

COMPENSATION

Fee Proposal including hourly rates
(from Consultant Proposal)

The total compensation may include a line item for the cost from the Fee Proposal, followed by a line item for any contingency, followed by a grand total not to exceed (NTE) Amount. This is what may be transferred to the front page of the contract.

EXHIBIT C
CERTIFICATIONS

C-1 through C-3

EXHIBIT D

ADDITIONAL PROVISIONS
Caltrans Forms

EXHIBIT 10-R A &E SAMPLE CONTRACT 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 CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

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A&E SAMPLE CONTRACT LANGUAGE

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ARTICLE I INTRODUCTION

- A. This contract 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: _____

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: _____

The Contract Administrator for LOCAL AGENCY will be _____ (Name)

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated ____ (Date) _____. The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. CONSULTANT agrees to indemnify and hold harmless LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.
- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY.
- E. Without the written consent of LOCAL AGENCY, this contract is not assignable by CONSULTANT either in whole or in part.
- F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- G. 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 STATEMENT OF WORK

(INSERT APPROPRIATE STATEMENT OF WORK INCLUDING A DESCRIPTION OF THE DELIVERABLES)

- 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 contract 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 contract 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 Chapter 6, “*Environmental Procedures*” in the LAPM, 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 plots 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 or another agency, or government that are to be made available to CONSULTANT are referred to in the contract. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Visits to Site, Inspection of Work

The contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

For contracts requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the contract 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 contract together with the method of payment for such services.

I. Documentation and Schedules

Contracts 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 contract objectives.

J. Deliverables and Number of Copies

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

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A & B below for standard contracts)

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the 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 contract.

(Option 2 - Use paragraphs A & B below for on-call contracts)

- 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 IV PERFORMANCE PERIOD (Verbatim)

(A time must be set for beginning and ending the work under the contract. 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 contract. 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 contract.)

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A & B below for standard and on-call contracts)

- A. This contract 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 contract shall end on ___(Date)___, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

(Option 2 - Use paragraph C below in addition to paragraphs A & B above for on-call contracts)

- 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 contract, the terms of the contract shall be extended by contract amendment.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

(Choose either Option 1, 2, 3, or 4)

(Option 1 - Use paragraphs A through J below for Actual Cost-Plus-Fixed Fee contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format)

- A. The method of payment for this contract 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 contract 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 contract is required, the contract time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

- B. 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 contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. 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.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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 contract 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 of this contract. The final invoice should be submitted within 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)

+

- H. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$ (Amount).
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.

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 contracts, 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. Use Exhibit 10-H, Example #3 for Cost Proposal Format)

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$ (Amount) per approved Cost Proposal. This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this contract.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

- C. The method of payment for this contract, 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 contract 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 contract is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.

(Option 3 - Use paragraphs A through P for Specific Rates of Compensation contracts [such as on-call contracts]. Use Exhibit 10-H, Example #2 for Cost Proposal Format)

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the 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 contract 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 Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. 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 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 contract 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 contract.
- 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, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 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 contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. 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 Contract.
- 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 contract amendment.
- N. If the 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 this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract 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 contract through Task Orders.

(Option 4 - Use paragraphs A through E below for lump sum contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format)

- A. The method of payment for this contract 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 II Statement of Work of this contract. 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 contract 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 the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

- C. CONSULTANT shall not commence performance of work or services until this contract 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 contract.
- D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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 Cost Proposal and shall reference this contract 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 of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:
- (NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS) +
- E. The total amount payable by LOCAL AGENCY shall not exceed \$ (Amount) .

ARTICLE VI TERMINATION (Verbatim)

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.

ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of

administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 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 contract.

(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater)

- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager 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 contract 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, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

(The following AUDIT CLAUSE must be inserted into all contracts of \$3,500,000 or greater).

- E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, 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 contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.
 - 1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans 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 Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at a provisional ICR until a FAR 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 Audit Guide; and other applicable procedures and guidelines) is received and approved by A&I. Provisional rates will be as follows:

- a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
 - b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
 - c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans 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. Caltrans 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 Section E, or if Caltrans 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 provisional 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 provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL GAENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICETO local agency no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING (Verbatim)

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) 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 CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI EQUIPMENT PURCHASE (Verbatim)

- 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 \$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 Cost Proposal and exceeding \$5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "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 \$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 contract, or if the contract 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 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)

(Choose either Option 1 or Option 2)

(Option 1 - For contracts where a portion of the proposed work to be performed are crafts affected by state labor laws, use paragraphs A and B)

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(Option 2 - Use only paragraph A below when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use)

- A. The State of California's General Prevailing Wage Rates are not applicable to this contract.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

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

- B. 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 contract.

(Choose either Option 1 or Option 2 if appropriate)

(Option 1 - Use paragraphs C & D below with paragraphs A & B above for PS&E contracts only)

- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

- D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

(Option 2 - Use paragraphs C, D & E below with paragraphs A & B above for Construction Contract Administration contracts only)

- C. CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.
- D. CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.
- E. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

CONSULTANT warrants that this contract 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 the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract 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 (Verbatim)

(Include this article in all contracts where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

- A. 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 CONSULTANT to any person for influencing or attempting to influence an officer or employee of any 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 of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement,

and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. 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 subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. 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.

(For contracts with Federal funding, add paragraphs C & D)

- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California 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.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of

materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and 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. Any exceptions to this certification must be disclosed to LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XVIII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract 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 contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract 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 contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XIX CHANGE IN TERMS

- A. This contract 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 contract without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is _____%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. 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. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT 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, Part 26 in the award and administration of US DOT-assisted agreements. Failure by 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 LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract 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 contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, 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.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract 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.
- I. 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 prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of

the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

- K. If a DBE subconsultant is decertified during the life of the contract, 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 Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract 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 contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A through C below for all contracts without PS&E submittal)

- A. Any dispute, other than audit, concerning a question of fact arising under this contract 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 30 days after completion of all work under the contract, 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 contract.

(Option 2 - Replace Paragraph B, above, with the following for contracts requiring the submission of PS&E)

- B. Not later than 30 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 XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV SAFETY

(Use on all contracts regardless of funding source)

- 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 Section 591 of the Vehicle Code, 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 to all contracts, 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 California Labor Code Sections 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 feet or deeper.

ARTICLE XXV INSURANCE

(Choose either Option 1 or Option 2)

(Option 1 - for Contracts 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 30 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 contract 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 contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) 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 contract, 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 contract upon occurrence of such event.

(Option 2 - For Contracts 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 XXVI OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.
- 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 contract.
- 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 contract 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 contract, 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 contract, 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 contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, 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 contract 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.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 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 contract record.

ARTICLE XXXI RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
(Local agency to include either B, C, or D below; delete the other two)
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.
- C. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant,

deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

- D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency’s prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this contract 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 XXXIII CONTRACT

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract 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 contract as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

(Name of Signer)

(Name of Signer)

Date: _____

Appendix
ATTACHMENT 3-1: NON-COLLUSION AFFIDAVIT
CERTIFICATIONS

NON-COLLUSION AFFIDAVIT
(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY OF SANTA ANA DEPARTMENT OF PUBLIC WORKS

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the BIDDER declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any BIDDER or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the BIDDER has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the BIDDER or any BIDDER, or to fix any overhead, profit, or cost element of the bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the BIDDER has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit. BIDDERS are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signed _____

State of California
County of _____

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature

Notary Public Seal

Appendix
ATTACHMENT 3-2: NON-LOBBYING CERTIFICATION
CERTIFICATIONS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative 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 any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant loan, loan or cooperative agreement, the undersigned shall complete and submit a "Disclosure of Lobbying Activities".

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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

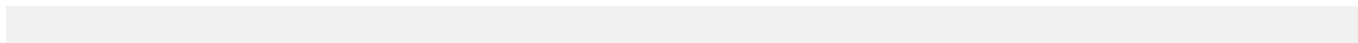
The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

Firm _____

Signed and Printed Name: _____

Title _____

Date _____



Appendix
ATTACHMENT 3-3: NON-DISCRIMINATION CERTIFICATION
CERTIFICATIONS

The undersigned consultant or corporate officer, during the performance of this contract, certifies as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation, to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted

by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the administering agency may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

8. Pursuant to California Labor Code Section 1735, as added by Chapter 643 Stats. 1939, and as amended,

No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicaps, mental condition, marital status, or sex of such persons, except as provided in Section 1420, and any consultant of public works violating this Section is subject to all the penalties imposed for a violation of the Chapter.

Signed: _____

Title: _____

Firm: _____

Date: _____

**Appendix
ATTACHMENT 4
CALTRANS DOCUMENTS**

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

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

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

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

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

INDIRECT COSTS

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

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

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

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

FIXED FEE

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

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

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

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

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

Subconsultant 1: \$ _____

Subconsultant 2: \$ _____

Subconsultant 3: \$ _____

Subconsultant 4: \$ _____

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

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

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

NOTES:

- 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.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

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

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

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

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

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

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

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

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

NOTES:

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.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

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

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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

--

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

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

Note: Mark-ups are Not Allowed

Consultant _____ Prime Consultant Subconsultant 2nd Tier Subconsultant

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

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

Fee = _____ %

BILLING INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²		
	Straight ³	OT(1.5x)	OT(2x)
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00
Land Surveyor **	\$0.00	\$0.00	\$0.00
Technician	\$0.00	\$0.00	\$0.00

CALCULATION INFORMATION

Effective Date of Hourly Rate	From	To	Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only	
						01/01/2016
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00	0.0%		Not Applicable
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00	0.0%		Not Applicable
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00	0.0%		\$00 - \$00
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		\$00 - \$00
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		\$00 - \$00
01/01/2016	12/31/2016	12/31/2016	\$0.00	0.0%		\$00 - \$00
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		\$00 - \$00
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		\$00 - \$00

(Add pages as necessary)

NOTES:

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

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

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

Consultant _____ Prime Consultant Subconsultant

Project No. _____ Contract No. _____ Date _____

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

Note: Add additional pages if necessary.

NOTES:

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

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

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

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

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

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2

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

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

Unit/Item of Work:

(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)

Include as many Items as necessary.

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

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

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

Note: Attach additional pages if necessary.

TOTAL COST PER UNIT OF WORK \$ _____

NOTES:

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

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

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

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

--

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

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

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

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 Request for 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 the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. 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 Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link in the left menu 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: (Insert Attachment Number)
 4. Project Location: _____
 5. Consultant's Name: (Consultant) 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: _____ 19. Proposed Contract Execution Date: <u>(Name)</u> _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
_____ 20. Local Agency Representative's Signature 21. Date _____ 22. Local Agency Representative's Name 23. Phone _____ 24. Local Agency Representative's Title	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		

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project 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. 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. 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.
- 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

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

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

Consultant's Full Legal Name: _____

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

Indirect Cost Rate:

Combined Rate _____ % **OR**

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

Facilities Capital Cost of Money _____% (if applicable)

Fiscal period * _____

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

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

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

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

Financial Management System:

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

Our financial management system has the following attributes:

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

accounts;

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

Cost Reimbursements on Contracts:

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

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

All A&E Contract Information:

- Total participation amount \$ _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____.
- Years of consultant’s experience with 48 CFR Part 31 is _____.
- Audit history of the consultant’s current and prior years (if applicable)

<input type="checkbox"/> Cognizant ICR Audit	<input type="checkbox"/> Local Gov’t ICR Audit	<input type="checkbox"/> Caltrans ICR Audit
<input type="checkbox"/> CPA ICR Audit	<input type="checkbox"/> Federal Gov’t ICR Audit	

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

Name**: _____ Title**: _____
 Signature: _____ Date of Certification (mm/dd/yyyy): _____
 Email**: _____ Phone Number**: _____

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

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

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