



**Cathedral City**

**REQUEST FOR PROPOSALS**

to provide

**“On-Call”**

**Engineering Support & Grant Administration Services  
For Various  
State and Federally Funded Transportation Projects**

Date of Issuance: May 6, 2019

**RESPONSES MUST BE RECEIVED NO LATER THAN**

**3:00 pm, May 29, 2019**

DELIVER OR MAIL TO:

John A. Corella, P.E., Dir. of Eng./Pub. Works

City of Cathedral City

68-700 Avenida Lalo Guerrero

Cathedral City, CA 92234

## Table of Contents

I.	PURPOSE .....	1
II.	BACKGROUND .....	1
III.	SCOPE OF SERVICES.....	1
IV.	SCHEDULE.....	2
V.	LIST OF INTERESTED PROPOSERS .....	2
VI.	QUESTIONS.....	3
VII.	SUBMITTAL PROCEDURES .....	3
VIII.	SUBMITTAL FORMAT.....	3
IX.	AGREEMENT FOR PROFESSIONAL SERVICES .....	4
X.	GENERAL ADMINISTRATIVE INFORMATION.....	4
XI.	SUBMITTAL DUE DATE .....	5
XII.	SELECTION PROCESS .....	5
XIII.	DBE AND OTHER FEDERAL INFORMATION.....	6
XIV.	ACCEPTANCE/REJECTION/MODIFICATION.....	6
XV.	AUTHORITY TO WITHDRAW .....	6
XVI.	AWARD OF CONTRACT.....	6
XVII.	ATTACHMENTS.....	7
	1. Cathedral City Agreement for Design Professional Services	
	2. Evaluation Sheet	
	3. Sample Cost Proposal	
	4. Exhibit 10-I Notice to Proposers DBE Information	
	5. Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System	

## I. PURPOSE

Cathedral City (City) is seeking proposals from qualified consultants to provide “on-call” engineering support and grant administration services for various State and Federally funded transportation projects. The City recognizes that the key to a successful Engineering Department is a good engineering support team. The purpose of this Request for Proposal (RFP) is to acquire a consultant who has the right skill set and experience level to provide the City with engineering support and grant administration services for various state and federally funded transportation projects. It is also desired that the costs for these services, to the extent possible, be eligible for state and federal reimbursement. This is **NOT** a request for a Consultant as an Agency Engineer or in a Management Support Role.

Current State and Federally funded projects within the City include the following:

1. **Cathedral Canyon Drive Bridge.** Design is complete, and selection of a Construction Management firm is pending. Construction, estimated to cost approximately \$19 million, is anticipated to start in December 2019
2. **HSIP Cycle 8. Traffic Safety Improvements at 20 intersections.** Design is complete and ready to go out to bid. Construction of the improvements is anticipated in summer 2019.
3. **HSIP Cycle 9 Date Palm Drive and Varner Road Traffic Safety Improvements.** Project has been listed in the 2019 FTIP. City has requested Federal Project Number from Caltrans. Once FPN is issued, the RFA for Preliminary Engineering can be prepared.
4. **HSIP Cycle 9 Traffic Safety Improvements at 10 intersections.** Project has been listed in the 2019 FTIP. City has requested Federal Project Number from Caltrans. Once FPN is issued, the RFA for Preliminary Engineering can be prepared.
5. **Ramon Road Bridge widening.** This project is being managed by the City of Palm Springs. Cathedral City has significant financial involvement in the project through right of way acquisition and construction.
6. **Vista Chino Bridge.** Another project being managed by City of Palm Springs. The project terminates to the east within Cathedral City corporate limits.

## II. BACKGROUND

Cathedral City is a California Charter City, with a Council/Manager form of government. The City is located approximately 120 miles east of Los Angeles and approximately 3 miles east of the City of Palm Springs, in Riverside County. A long with nine other cities, Cathedral City is within a geographical area commonly known as the Coachella Valley. It is the second largest city in the Coachella Valley with a growing population of 53,000 residents. The City was incorporated in October 1982.

The City intends to award one contract to a firm to provide “on-call” engineering support and grant administration services on state and federally funded transportation projects, including those listed in RFP Section I for a period of up to three (3) years. It is anticipated that a minimum of one staff position will be required for this assignment, with a maximum budget of \$600,000 (\$200,000/yr.).

## III. SCOPE OF SERVICES

The Consultant is expected to provide weekly engineering support on or off site, as determined by the Director of Engineering / Public Works. The anticipated length of the contract is three years. Typical services to be provided include, but are not limited to, the following:

- a. Prepare for City signatures any necessary documents, and coordinate with various regional, county, state and federal funding agencies to acquire and maintain funding and approvals.
- b. Identify grant opportunities, prepare applications and documents (i.e. proposals and plans), evaluate and prepare budgets, and complete required federal forms.
- c. Attend Project Development Team meetings on behalf of the City.
- d. Assist in the preparation of formal and informal requests for proposals for design and/or construction projects and summarize proposals received.
- e. Monitor and report on project status, budget vs. actual expenditures, and contract time vs. actual time.
- f. Provide design and construction services for minor Capital Improvement Projects.
- g. Prepare and track project schedules.
- h. Prepare correspondence, reports, and memoranda necessary to administer various State and federally funded transportation projects.
- i. Assist with issues associated with the Coachella Valley Transportation Uniform Mitigation Fee (TUMF) Program.
- j. Provide services in compliance with current Caltrans/Federal Highway Administration or other applicable state/federal policies and procedures where required for the project.
- k. Other duties as assigned by the Director of Engineering / Public Works.

The selected firm will be responsible for providing engineering support and grant administration services to ensure delivery of the projects remain consistent with FTIP, HBP and HSIP project schedules and programming guidelines, communicating with Caltrans on project deliverables and other administrative functions associated with delivering federally funded Local Assistance projects.

#### IV. SCHEDULE

	DEADLINES:
Notice Requesting Proposals Posted/Issued	May 6, 2019
Deadline for Submittal of Questions	May 9, 2019 at 3:00 pm
Response to Questions	May 15, 2019 at 3:00 pm
Proposal Due Date	May 29, 2019 at 3:00 pm
Proposal Review/Evaluation	Week of June 3, 2019
Negotiation of Contract (if needed)	Week of June 10, 2019
Award of contract	June 26, 2019

#### V. LIST OF INTERESTED PROPOSERS

The full content of the RFP is available through the Cathedral City website for the Engineering Department at [www.cathedralcity.gov](http://www.cathedralcity.gov). If addenda are necessary, they will be posted onto the website. All firms interested in proposing on this contract are encouraged to sign-up on the "List of Interested Proposers" for the project. This list will be used to email any project updates, addenda, changes or responses to written inquires and will be distributed to all interested companies. To get on the list please email Paul Mangaudis, P.E., Senior Engineer, at [pmangaudis@cathedralcity.gov](mailto:pmangaudis@cathedralcity.gov).

## VI. QUESTIONS

All questions regarding this RFP shall be submitted in writing to Paul Mangaudis, P.E., Senior Engineer, via email at [pmangaudis@cathedralcity.gov](mailto:pmangaudis@cathedralcity.gov). The date and time when questions must be submitted are shown in "Section IV – Schedule" of this RFP. Questions with their answers will be posted on the City website by the date and time set forth in this RFP.

## VII. SUBMITTAL PROCEDURES

Submittals shall comply with all conditions, requirements and specifications contained herein, with any departure constituting sufficient cause for rejection of the proposal at the City's sole discretion. The submittal shall contain the name of this RFP and respondents shall provide four (4) copies of the Work Proposal and one (1) copy of the Cost Proposal.

Faxed or emailed submittals will not be accepted. All proposal submittals shall be mailed or delivered and received by the City no later than May 29, 2019 at 3:00 pm PDT, addressed as follows:

John A. Corella, P.E., Dir. of Eng./Pub. Works  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

## VIII. SUBMITTAL FORMAT

All respondents must submit qualifications according to the specifications set forth below. Submittals must be relevant to the specific work required and should not exceed 14 pages of information, single sided, 8.5" x 11" sized paper, with 10-point Arial font. The page limit includes resumes and appendices. The page limit does not include the front and back covers, tabs to separate sections or the table of contents.

### **EACH SUBMITTAL MUST INCLUDE TWO (2) SEPARATELY SEALED ENVELOPES:**

- A. **WORK PROPOSAL** (ENVELOPE 1), clearly marked "Work Proposal", shall include:
- i. Cover Letter
    - a. Provide the name and contact information for the Project Manager of the firm submitting the proposal. Include a brief description of the firm. This letter must bear the signature of the person having proper authority to make the proposal for the firm.
    - b. There shall be one person from your firm identified in your proposal who will be the Project Manager for the City. This person will be responsible for the services listed in "Section III - Scope of Services" of this RFP.
    - c. Any anticipated subconsultant(s) shall be identified. All subconsultant contracts over \$25,000 must contain all required provisions of the prime contract.
  - ii. Statement of Qualifications
    - a. A listing of the firm's project personnel including relevant experience, resumes and other information relevant to the proposal, including firm's ability to conform to applicable state and federal procedures to ensure project funding.

- b. Address the firm's experience with similar work. Include names and current phone numbers of reference for any listed projects.
  - c. Address project understanding and approach.
- iii. Scope of Work
- a. Provide a description of the work objectives by task, sub-task, and deliverables that are anticipated to be provided.

**B. COST PROPOSAL (ENVELOPE 2),** clearly marked "Cost Proposal", shall include:

- i. Professional Service Rate Sheets
  - a. Include a detailed breakdown of all personnel by classification, hours, and hourly billing rates; see Attachment 3 for the preferred format. The rate sheets shall include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Any proposed travel and/or mark-ups on outside services shall also be noted. The rate sheets shall note if there are any changes, or not, to the proposed rate(s) over time.
- ii. Consultant Certification of Contract Costs and Financial Management System
  - a. Include an executed Exhibit 10-K "Consultant Certification of Contract Costs and Financial Management System" for prime and all subconsultants. A copy of Exhibit 10-K is provided in Attachment 6. Due to federal contract provisions, no contract will be awarded to a consultant without an adequate financial management system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31. Selected consultant will be paid according to specified rates of compensation for the work performed.

**IX. AGREEMENT FOR DESIGN PROFESSIONAL SERVICES**

The Cathedral City Agreement for Design Professional Services (Attachment 1) is included for review and comment. The firm's submission of a proposal indicated affirmative compliance of such terms, unless the proposal indicates that compliance is not possible. Proposed revisions should be addressed in the cover letter. The City reserves the right to make any revisions to the proposed professional services agreement.

**X. GENERAL ADMINISTRATIVE INFORMATION**

Each respondent understands and agrees that the City, its departments, their officers, employees or agents is not responsible for:

- a. Any costs incurred by a respondent in the preparation, delivery or presentation of a proposal.
- b. Any costs incurred by a respondent in meeting the criteria as a result of making or submitting a proposal or subsequently in entering into a formal agreement with the City.
- c. Any errors, inaccuracies or misstatements related to the information or data supplied to any consultant by the City. The use of such information or data provided by the City, its officers, employees or agents is intended to be used at the sole discretion and risk of the firm in the preparation of a proposal pursuant to this Request for Proposal only.

The selected firm shall comply with all applicable Federal and State laws pertaining to scope of work. All proposals submitted in response to this RFP shall become the property of Cathedral City and will not be returned and such proposals, after the contract is awarded, are subject to the California Public Records Act.

This contract may be reimbursed with State & Federally Funded Active Transportation Program Funds. As such, all consultants must comply with 48 Code of Federal Regulations (CFR) Part 31: *Contract Cost Principles and Procedures*. In addition, consultants must comply with 2 CFR Part 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, excluding sections §200.318-200.326 *Procurement Standards*.

This contract is subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Depending on the final negotiated contract value, the City may request, **and the Consultant shall provide**, documentation justifying the audited indirect cost rates being certified. This includes but is not limited to FAR compliant indirect cost rate schedules, CPA audited indirect cost rate report, prior year indirect cost rate schedule, AASHTO Internal Control Questionnaire Appendix B, post-closing trial balance, vacation/sick policy, bonus policy, executive compensation analysis, and prevailing wage policy.

## XI. SUBMITTAL DUE DATE

The submittal package must be received on/or prior to the submittal date and time specified in "Section IV - Schedule" of this RFP. Firms mailing a proposal must allow sufficient delivery time to ensure timely receipt of the proposal by the date and time specified. Submittals arriving after the deadline will not be considered.

## XII. SELECTION PROCESS

After the receiving deadline, each proposal will be reviewed in a timely manner by the City Engineer and a selection committee. The committee will rank the consultants for contract negotiations based upon the materials submitted within the Work Proposal. A copy of the Evaluation Criteria is provided in Attachment 2. Notwithstanding, the City will be the sole and exclusive judge of quality and compliance with proposal specifications in any of the matters pertaining to this RFP. The City reserves the right to award the contract(s) in any manner it deems to be in the best interest of the City and make the selection based on its sole discretion, including negotiating with one or more of the proposers for the same service.

The City will open contract negotiations with the top-ranked firm. The successful firm will be expected to enter into the Agreement for Professional Services with the City. Due to state and federal regulations, the successful firm may be selected by Caltrans for an audit or review through a risk-based approach. Accordingly, interested proposers must be familiar with Caltrans audit procedures including contract audits, incurred cost audits, financial management system reviews, ICR audits, and risk assessments.

Should negotiations with the top-ranked firm dissolve; the City will open the cost proposal and begin contract negotiations with the second ranked firm, and so forth until an agreement is reached.

The City reserves the right to contract with multiple firms or reject all proposals at its sole discretion. Consultants are encouraged to keep their proposals brief and relevant to the specific work required.

### **XIII. DBE AND OTHER FEDERAL INFORMATION**

This project is subject to Title 49 Code of Federal Regulations Part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. However, the City does not expect any subconsultant opportunities therefore the Disadvantaged Business Enterprise (DBE) goal is 0% for this contract. If the interested firm is anticipating subconsultant work or if the contract changes due to an amendment that requires subconsultant work, the interested firm shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance. Proposers are required to review the requirements in Exhibit 10-I "Notice to Proposers DBE Information" provided in Attachment 4.

The successful firm will be required to execute Caltrans LAPM Exhibit 10-01, Exhibit 10-O2 and Exhibit 10-Q which will be provided to the successful firm at the conclusion of the cost negotiations.

### **XIV. ACCEPTANCE/REJECTION/MODIFICATION**

Cathedral City reserves the right to accept, reject, modify or cancel in whole or in part, this Request for Proposal. The City reserves the right to accept or reject any and all proposals, negotiate modifications to proposals that it deems acceptable, to request and consider additional information from any proposer and to waive minor irregularities and technical defects in this proposal process. The City reserves the right to seek new proposals when it determines that it is in the best interest of the City to do so.

### **XV. AUTHORITY TO WITHDRAW**

Cathedral City reserves the right to withdraw this Request for Proposal (RFP) without prior notice. The City makes no representation that any agreement will be awarded to any firm as a result of having responded to this request. All proposals submitted in response to this RFP shall become the property of the City and will not be returned.

### **XVI. AWARD OF CONTRACT**

Based on the outcome of the Selection Committee's evaluation of proposals, a recommendation will be submitted to the City Council for consideration of award. An award of a contract occurs when the contract is approved by the City Council. Selection of a proposer with whom the City enters into contract negotiations with or a recommendation of an award by the Selection Committee or any other party does not constitute an award of a contract.

The contract shall be in accordance with the attached Agreement for Design Professional Services and shall be based upon the specified rates of compensation to provide the agreed upon services. The contract shall be performed on a "Task Order" basis as needed by the City. The City will request and negotiate a scope of work and schedule at the established billing rates for each project on which the consultant shall work. The contract will be based upon the negotiated specific rates of compensation. The City does not guarantee that there will always be enough work assignments to reach the maximum contract amount.



The anticipated length of the contract is up to three years, from July 1, 2019 through June 30, 2022, unless terminated sooner by the City.

## **XVII. ATTACHMENTS**

- Attachment 1. Cathedral City Agreement for Design Professional Services
- Attachment 2. Evaluation Sheet
- Attachment 3. Sample Cost Proposal
- Attachment 4. Exhibit 10-I Notice to Proposers DBE Information
- Attachment 5. Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System

# **ATTACHMENT 1**

Cathedral City Agreement for Design Professional Services

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND**

This Agreement for Design Professional Services (“Agreement”) is entered into as of \_\_\_\_\_, 2019 (“Effective Date”) by and between the City of Cathedral City, a municipal corporation (“City”) and \_\_\_\_\_, a \_\_\_\_\_ (“Design Professional”). City and Design Professional are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

A. City has sought, by request for proposals, the performance of the engineering services defined and described particularly in Section 2 of this Agreement.

B. Design Professional, following submission of a proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Design Professional was selected by the City on the basis of Design Professional’s demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

D. Pursuant to the City of Cathedral City’s Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Design Professional for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1. TERM OF AGREEMENT.**

Subject to the provisions of Section 21 "Termination of Agreement" of this Agreement, the Term of this Agreement is for two (2) years.

**2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.**

Scope of Services. Design Professional agrees to perform the services set forth in Exhibit “A” “Scope of Services” (hereinafter, the “Services”) and made a part of this Agreement by this reference.

Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit “A.” Should the Services not be completed pursuant to that schedule, the Design Professional shall

be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Design Professional to continue performing the Services.

### **3. ADDITIONAL SERVICES.**

Design Professional shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 27 "Administration and Implementation" or Section 29 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

### **4. ALLOWABLE COSTS AND PAYMENTS**

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

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

- F. Reimbursement for transportation and subsistence costs shall not exceed State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone

cost estimate from the Contract Administrator before exceeding such estimate.

- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

John A Corella, P.E.  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234
- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

## **5. INSPECTION AND FINAL ACCEPTANCE.**

City may inspect and accept or reject any of Design Professional's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design Professional's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Design Professional's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Design Professional's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 17 "Indemnification" and Section 18 "Insurance."

## **6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Design Professional. Upon completion, expiration or termination of this Agreement, Design Professional shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement, Design Professional's guarantees and warranties in Section 9 "Standard of Performance; Familiarity With Work" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

## **7. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.**

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

## **8. INDEPENDENT CONTRACTOR.**

Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Design Professional shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or

otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

The personnel performing the Services under this Agreement on behalf of Design Professional shall at all times be under Design Professional's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Design Professional or any of Design Professional's officers, employees, or agents except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

Neither Design Professional, nor any of Design Professional's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Design Professional expressly waives any claim Design Professional may have to any such rights.

#### **9. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.**

Design Professional represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Design Professional shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Design Professionals work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

Design Professional warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

#### **10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Design Professional shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Design Professional shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Design Professional to comply with this section.

#### **11. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

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

## **12. PREVAILING WAGE LAWS.**

A. **Covenant to Comply.** Consultant covenants that it shall fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). For purposes of this Section 25(a) only, the term "subcontractors" shall not include suppliers, manufacturers, or distributors. Consultant further covenants that it shall take all practicable steps to ensure that its subcontractors comply with Prevailing Wage Laws if applicable to work performed by subcontractors. References to "Covered Services" hereinafter shall designate such Services as are subject to Prevailing Wage Laws.

B. **Payroll Records.** Consultant and all subcontractors performing Covered Services shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey person, apprentice, or other employee. All payroll records shall be certified as being true and correct by Consultant or the subcontractors performing Covered Services keeping such records; and the payroll records shall be available for inspection at all reasonable hours at Consultant's principal office.

C. **Subcontracts.** Any subcontract entered into as a result of this Agreement 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 Section.

## **13. NONDISCRIMINATION and STATEMENT OF COMPLIANCE.**

A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.



B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.

E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.

G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

#### **14. DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION**

A. This Agreement 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 Agreement is 0%. 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 in Exhibit D and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. 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 Agreement or such other remedy as the City 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 the City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City 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 Agreement, 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 Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to the City's Contract Administrator within 30 days.

## **15. COST PRINCIPLES**

(a) Notwithstanding any other provision of this Agreement, Consultant agrees that the Contract Cost Principles and Procedures set forth in 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.

(c) In providing the services under this Agreement, Consultant agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) Consultant acknowledges that payments made by City to Consultant under this Agreement are subject to audit by the California Department of Transportation ("Caltrans") and/or the federal government. The Consultant agrees to adhere to the Accounting and Auditing Guidelines for contracts with Caltrans available at dot.ca.gov, as well as the federal guidelines set forth herein. Any cost for which payment has been made to Consultant that is determined by a subsequent audit to be unallowable under 49 CFR, Part 18, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., or under Caltrans auditing principals is subject to repayment by Consultant to the City. In such case, the City shall provide Consultant with a copy of the audit findings and Consultant shall make the payment within ten days of City's request.

## **16. CONFLICTS OF INTEREST.**

Design Professional covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Design Professional's performance of the Services. Design Professional further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Design Professional agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

City may determine that Design Professional must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. If such a determination is made, Design Professional shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk within ten (10) days of the request.

City understands and acknowledges that Design Professional is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Design Professional is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

City understands and acknowledges that Design Professional will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

#### **17. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

All information gained or work product produced by Design Professional in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design Professional. Design Professional shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

Design Professional, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Design Professional gives City notice of such court order or subpoena.

If Design Professional, or any officer, employee, agent or subcontractor of Design Professional, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Design Professional for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Design Professional's conduct.

Design Professional shall promptly notify City should Design Professional, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design Professional. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### **18. INDEMNIFICATION.**

Indemnification by Design Professional. As provided under Civil Code Section 2782.8, Design Professional shall indemnify, protect, defend and hold harmless City and any and all of its officials,

employees and agents (“Indemnified Parties”) from and against any and all claims, actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney’s fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or sub-consultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement, with the understanding that in the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City and its contractors and Design Professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence.

Indemnification from Subcontractors. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, subcontractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

City's Negligence. The provisions of this section do not apply to Claims occurring as a result of City’s sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

## **19. INSURANCE.**

Design Professional agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit “C” “Insurance” and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Design Professional agrees to provide City with copies of required policies upon request.

## **20. ASSIGNMENT.**

The expertise and experience of Design Professional are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional’s duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 21 “Termination of Agreement.” City acknowledges, however, that Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

## **21. CONTINUITY OF PERSONNEL.**

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional’s staff and subcontractors, if any, assigned to perform the Services. Design

Professional shall notify City of any changes in Design Professional's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

## **22. TERMINATION OF AGREEMENT.**

City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.

Design Professional may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

If either Design Professional or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Design Professional, or City may terminate this Agreement immediately upon written notice.

Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional's possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

## **23. DEFAULT.**

In the event that Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Design Professional is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 19 "Termination of Agreement." Any failure on the part of the City to give notice of the Design Professional's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## **24. EXCUSABLE DELAYS.**

Design Professional shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Design Professional. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

## **25. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Design

Professional in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

**26. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Cathedral City  
Attn: City Manager  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

To Design Professional: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**27. AUTHORITY TO EXECUTE.**

The person or persons executing this Agreement on behalf of Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional to the performance of its obligations hereunder.

**28. ADMINISTRATION AND IMPLEMENTATION.**

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 27 "Amendment" and the City Manager's contracting authority under the Cathedral City Municipal Code.

**29. BINDING EFFECT.**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**30. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Design Professional and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**31. WAIVER.**

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Design Professional shall not constitute a waiver of any of the provisions of this Agreement.

**32. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

**33. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**34. ENTIRE AGREEMENT.**

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Design Professional and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

**35. SEVERABILITY.**

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**36. CONFLICTING TERMS.**

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.



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

CITY OF CATHEDRAL CITY

[DESIGN PROFESSIONAL NAME]

\_\_\_\_\_  
Charles P. McClendon  
City Manager

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

**ATTEST:**

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

\_\_\_\_\_  
Tracey Martinez  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Eric S. Vail  
City Attorney

**NOTE: DESIGN PROFESSIONAL’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DESIGN PROFESSIONAL’S BUSINESS ENTITY.**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA )
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2019, before me, \_\_\_\_\_,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")
personally appeared \_\_\_\_\_,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

Table with 2 columns: CAPACIT(IES) CLAIMED BY SIGNER(S) and DESCRIPTION OF ATTACHED DOCUMENT. Rows include Signer's Name, Title(s), Number Of Pages, Date Of Document, and Signer(s) Other Than Named Above.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2019, before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_,  
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

**CAPACIT(IES) CLAIMED BY SIGNER(S)**

**DESCRIPTION OF ATTACHED DOCUMENT**

Signer's Name: \_\_\_\_\_

- .. Individual
- .. Corporate Officer

\_\_\_\_\_  
Title(s)

- .. Partner(s) .. Limited
- .. General

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other: \_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**EXHIBIT "B"**  
**COMPENSATION**

## EXHIBIT "C" INSURANCE

A. Insurance Coverages. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Service Provider shall procure and maintain the following scope and limits of insurance:

**Only the following “marked” requirements are applicable:**

X **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Service Provider and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

X **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the City.

X **Workers' Compensation Insurance:** Workers' Compensation insurance that includes a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Service Provider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Service Provider participating under this Agreement, Service Provider is to defend and indemnify the City from such claim.

X **Professional Liability Insurance:** Professional liability insurance appropriate to the Service Provider's profession in an amount not less than one million dollars \$1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider's services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this

Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

b. Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.

c. Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Service Provider.

C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Service Provider shall furnish certificates and endorsements from each sub-contractor identical to those Service Provider provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.



**EXHIBIT D**  
**EXHIBIT 10-02 – CONSULTANT CONTRACT DBE COMMITMENT**

# **ATTACHMENT 2**

Evaluation Sheet

**REQUEST FOR PROPOSAL EVALUATION SHEET**

**Project Name:** Engineering Support & Grant Administration for State and Federally Funded Transportation Projects

**Consultant:** \_\_\_\_\_

**Reviewer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Understanding of work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with State and Federal procedures	10	
Financial Responsibility	10	
Demonstrated Technical Ability	10	
<b>Total</b>	<b>100</b>	

Unique Qualities (Intangibles): \_\_\_\_\_  
(Explanation) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TOTAL** \_\_\_\_\_

**Reviewer's Signature** \_\_\_\_\_

**Contract Administrator's Initials** \_\_\_\_\_ **Date** \_\_\_\_\_

## Scoring Breakdown:

### Understanding of work to be done - 25 points maximum

0-10: Scope of work is off topic or is missing more than 5 key elements.

11-20: Scope of work is understandable but missing a few key elements.

21-25: Scope of work well justified and most or all key elements are included.

### Experience with similar kinds of work - 20 points maximum

0-10 points: Consultant does not include previous experience or has very minimal experience.

11-15 points: Consultant lists previous experience, but experience is not relevant or similar.

16-20 points: Consultant lists relevant previous experience with similar work.

### Quality of staff for work to be done - 15 points maximum

0-5 points: Resumes not included or staff has little to no experience with similar project.

6-10 points: Staff list includes resumes but experience is not relevant or similar.

11-15 points: Staff has relevant experience and is competent to perform scope requested.

### Capability of Developing innovative or advanced techniques – 10 points maximum

0-5 points. No innovation or advanced techniques

6-10 points. Innovation or advanced techniques included in Proposal

### Familiarity with State and Federal Procedures - 10 Points Maximum

0-3 points: Zero to little previous Federal and State project experience

4-6 points: Federal and State experience but not on similar work.

7-10 points: Relevant Federal and State Experience.

### Financial Responsibility – 10 points maximum

0 points. No demonstrated financial responsibility

1-4 points. Financial responsibility demonstrated, but history of weakness

5-10 points. Financial responsibility demonstrated with history of strength

### Demonstrated Technical Ability - 10 points maximum

0-4: Technical ability weakly demonstrated

5-7: Technical ability demonstrated but not as a strong factor

8-10: Technical ability well demonstrated and relevant to this project.

## **ATTACHMENT 3**

Sample Cost Proposal

**EXHIBIT 10-H2 COST PROPOSAL** Page 1 of 3

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

Note: Mark-ups are Not Allowed

Consultant \_\_\_\_\_  Prime Consultant  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**

**CALCULATION INFORMATION**

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

NOTES:

1. 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 should be based on the consultant's annual accounting period, 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 \_\_\_\_\_

<b>SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)</b>				
<b>Description of Item</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>
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.



**Certification of Direct Costs:**

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

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

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

**Prime Consultant or Subconsultant Certifying:**

Name: \_\_\_\_\_

Title \*: \_\_\_\_\_

Signature : \_\_\_\_\_

Date of Certification (mm/dd/yyyy): \_\_

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Address: \_\_\_\_\_

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

List services the consultant is providing under the proposed contract:

## **ATTACHMENT 4**

Exhibit 10-I Notice to Proposers DBE Information

## 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 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-O1 Consultant Proposal DBE Commitment

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

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature _____	22. Date _____	12. Preparer's Signature _____	13. Date _____
23. Local Agency Representative's Name _____	24. Phone _____	14. Preparer's Name _____	15. Phone _____
25. Local Agency Representative's Title _____		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 COMMITMENT

May 8, 2013

## CONSULTANT SECTION

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

## LOCAL AGENCY SECTION

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

## **ATTACHMENT 5**

Exhibit 10-K Consultant Certification of Contract Costs and Financial Management System



**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