CITY OF CATHEDRAL CITY
68-700 AVENIDA LALO GUERRERO
CATHEDRAL CITY, CA 92234
(760) 770-0340

REQUEST FOR PROPOSALS

FOR

PROFESSIONAL ENGINEERING SERVICES
HISP CYCLE 9 PROJECT – FEDERAL PROJECT: HISPL-5430(035)
"DATE PALM DRIVE AND VARNER ROAD SAFETY IMPROVEMENTS"
(CITY PROJECT: PN 8751)

BID NUMBER: BID B19-08E

Issued:
October 24, 2019

CITY OF CATHEDRAL CITY
REQUEST FOR PROPOSALS
FOR
PROFESSIONAL ENGINEERING SERVICES FOR THE DATE PALM DRIVE AND VARNER ROAD SAFETY IMPROVEMENTS
HISPL-5430(035) – CP 8751 – BID B19-08E

The City of Cathedral City requests proposals from qualified professional engineering consultants to prepare the plans, specifications, and estimates (PS&E) for this Highway Safety Improvement Program (HSIP) funded project.

The approximate project limits are **Date Palm Drive between I-10 and Varner Road and Varner Road between Mountain View and Bob Hope Drive**.

PURPOSE

The City of Cathedral City performed a roadway and intersection safety analysis throughout the entire city. Varner Road, Mountain View Road within City limits, and a portion of Date Palm Drive within the northern section of the City included several serious collisions due to lane departures and collisions related to the all-way stop intersections along the segments. To increase the safety of the traveling public along these segments, the City proposes to:

1. Install pavement rumble strips along the centerline and edge-lines of the roadways. These rumble strips are intended to provide audible and tactile feedback to the drivers to let them know that they are leaving the roadway.
2. Install guardrail on the outside of two roadway curves to protect errant vehicles from colliding with electrical poles or other obstacles.
3. Replace the existing standard and oversized stop signs at 3 all-way stop intersections with solar-powered flashing stop signs. These flashing stop signs are intended help notify drivers of the intersection further in advance than a standard stop sign.

The City successfully received federal funding through the Highway Safety Improvement Program (HSIP) Cycle 9 to complete these improvements. A project vicinity map of the improvements is provided for in Attachment 1 and a copy of the grant application is available upon request.

SERVICES REQUESTED

Working on federally funded projects require in depth knowledge of the Caltrans Local Assistance Procedures Manual (LAPM), Local Assistance Program Guidelines (LAPG), and other Federal Highway Administration (FHWA) requirements. Interested firms shall address in their qualification statements their ability to provide the following services if selected by the City.

1. PROJECT MANAGEMENT/ADMINISTRATION

The Consultant shall be responsible for project management activities throughout the life of the contract including managing the schedule, budget, setting up meetings, field reviews, and managing the project team. The Consultant must include a kick-off meeting and further appropriate number of follow up meetings with City staff. The Consultant may be required to attend a City Council meeting.

Deliverable(s): Monthly Progress Reports, Meeting Agendas, Minutes, and Schedule Updates.

2. FIELD WORK / UTILITY COORDINATION / PRELIMINARY PLANS

This task should include a field visit at the project sites to verify existing conditions, setting up a base map for the proposed improvements, and laying out the preliminary improvement plans. The base map shall include right of way lines and utility information. Consultant shall include proper utility coordination as necessary.

Deliverable(s): Right of Way and Utility Base Maps, Preliminary Plans.

3. ENVIRONMENTAL DOCUMENTATION

NEPA Clearance – Consultant shall prepare preliminary environmental study (PES) per Caltrans LAPM Chapter 6. This task shall include any necessary technical reports to evaluate the project impacts.

CEQA Clearance – Consultant shall prepare Notice of Exemption and file with County of Riverside.

Deliverable(s): NEPA PES, Technical Reports, and CEQA NOE.

4. PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Upon approval of the preliminary plans and environmental documents, the Consultant shall develop the final plans, project specifications, and an estimate of construction costs following the latest Caltrans, AASHTO, and City standards. The PS&E shall be developed and submitted for City review. The Consultant shall assume at least two reviews (90% and 100%) during the development of the PS&E.

Deliverable(s): 90% and 100% Plans, Specifications, and Estimate.

5. BIDDING ASSISTANCE

During the bidding and construction phases of the project the Consultant shall remain available to provide assistance to City of Cathedral City staff and/or potential contractors in answering pre-bid questions, and interpretations of the plans and specifications either by email or phone. The Contractor is expected to furthermore provide responses to Requests for Information (RFI's), and prepare addendums, if necessary.

This Task should include attendance at Pre-Bid Meeting.

Deliverable(s): Responses to bidder questions.

6. CONSTRUCTION SUPPORT

The Consultant shall attend the Pre-Construction meeting as well as answer any Request for Information as related to the Plans and Specifications. The Consultant shall review submittals as necessary and prepare the final Record Drawings based on the red-line copies of the plan from the Contractor and Inspector.

Deliverable(s): Responses to RFI's, Submittal Approvals, Record Drawings.

The above services and products represent a general list of the project components. The consultant is expected to prepare a detailed scope of work based upon its knowledge and experience on related projects.

PROJECT DEVELOPMENT PROCESS

Generally, the project development process will be as follows:

1. **Pre-Meeting (Kick-Off Meeting)**

   Participate in an initial meeting between the consultant and City staff to clarify project development and improvement objectives. The meeting will also serve to confirm timelines, schedules and milestones.

2. **Project Approval**

   A. Perform field review, secure utility atlas maps, and set up the preliminary plans for City approval.

   B. Prepare PES for City and Caltrans approval based on preliminary project impacts. Refine project as necessary and perform any required technical reports for NEPA Compliance. Prepare Notice of Exemption for CEQA Compliance.

3. **Final Project Development**

   A. Consultant shall prepare the final PS&E and other necessary documents.

   B. Consultant shall assist and advise the City on all matters related to the project.

   C. All approved plans shall be provided to the City on compact disk in AutoCAD 14 or higher format, as well as on "D" size Mylar. Specification documents, including technical specifications, shall be provided on electronically in Microsoft Word for Windows format. The Engineer's estimate shall be provided in Excel for Windows format.

4. **Bidding Phase**

   The consultant shall provide assistance in preparing the necessary documents for the project for bid. Technical support during the bidding and award process shall also be required.

5. **Construction Phase**

   Consultant shall provide technical oversight during the construction phase. Consultant shall respond to requests for information (RFI's), review submittals and review proposed change orders. Consultant shall prepare record drawings based on redlines provided by the construction inspector and the contractor.

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

QUESTIONS

All questions regarding this RFP shall be submitted in writing to: Paul Mangaudis, Senior Engineer, via email at pmangaudis@cathedralcity.gov. Questions shall be submitted by the date and time as set forth in this RFP. Questions with their answers will be posted on the City's website by the date and time set forth in this RFP.

PROPOSAL FORMAT

Proposals (work proposal and cost proposal) are to be submitted in separate envelopes clearly marked with the project name, bid number (**BID B19-08E**), consultant's name, address and phone number. Only one proposal per consultant shall be considered.

Proposal packages shall be submitted to the City on or before **November 21, 2019 at 3:00 p.m.** Proposals received after the stated deadline shall not be accepted. Proposal packages are to be delivered to:

John A. Corella, P.E.
Director of Engineering/Public Works
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

The City reserves the right to waive informalities and to reject all proposals at its sole discretion.

Consultants are encouraged to keep their proposals brief and relevant to the specific work required. Proposals shall be limited to twenty-five (25) pages total. The front and back covers, table of contents, and tab separators will not count as part of the page limit. Similarly, full resumes may be attached along with the client reference list and will not count as part of the limit. Proposals shall include the following items:

I. Work Proposal (Envelope 1) - Submit four (4) copies

A. Cover Letter

(1) The name, address and phone number of the consultant's contact person for the remainder of the selection process. The project manager must be licensed as a Professional Civil Engineer in the State of California.

(2) Any qualifying statements or comments regarding the consultant's proposal, the information provided in the RFP or the proposed contract.

(3) Identification of sub-consultants and their responsibilities.

B. Statement of Qualifications

(1) Consultant's experience with similar work, including names and current phone numbers of references for listed projects.

C. Project Understanding and Approach

(1) Provide a description of your understanding of the project, and your approach to managing, staffing, and completing the project.

D. Scope of Work Program

(1) Provide a description of the tasks, sub-tasks, and deliverables.

E. Project Schedule

(1) A comprehensive Gantt/Critical Path Method (CPM) schedule shall be submitted describing the nature and scheduling of the proposed evaluation, roadway, hydraulic analysis, environmental studies, right of way and other studies or documents as required and bridge design tasks.

E. Consultant Proposal DBE Commitment / Good Faith Efforts

(1) Provide a completed and signed Exhibit 10-O1 "Consultant Proposal DBE Commitment" to demonstrate that you are committed to meeting the City of Cathedral City's DBE Goal as instituted in the DBE Information section. If the Contractor is unable to meet the goal, provide a completed Exhibit 15-H "DBE Information – Good Faith Efforts" to demonstrate the good faith effort made to meet the goal. Exhibit 10-O1 and Exhibit 15-H are provided in Attachment 2.

II. Cost Proposal (Envelope 2) – Submit 1 Copy.

A. Detailed Cost Proposal

(1) This contract will be reimbursed at Lump Sum. Consultant shall submit a detailed cost proposal for all services and materials anticipated in completing the project. Cost Proposals shall be prepared to follow the order and format of the work objectives listed in the "Scope of Work Program." Cost proposals shall, as a minimum, show all anticipated prime and sub-consultant costs by task and sub-task, including personnel by classification, hours, and hourly billing rates. Other direct costs shall be summarized at the project level, rather than by task.

A cost break-down for each project task and/or sub-task shall be defined.

B. Professional Service Rate Sheets

(1) Include a list of all personnel by classification, and hourly billing rates with effective dates. See Attachment 2 for the required format of the Professional Services Rate Sheet. The rate sheet shall include your audited Indirect Cost Rate (ICR) broken down into rates for fringe benefits, overhead, and general administration. The rate sheet shall also include your proposed fee. Any proposed travel and/or markups on outside services should be noted. The rate sheet shall note if there are any changes, or not, to the proposed rate(s) over time.

C. Consultant Certification of Contract Costs and Financial Management System

(1) Cost Proposals shall include an executed Exhibit 10-K "Consultant Certification of Contract Costs and Financial Management System" for the prime and all sub-consultants. A copy of Exhibit 10-K is included in Attachment 2. Due to Federal

contract provisions, no contract will be awarded to a consultant without an adequate financial management system, as required by 48 CFR Chapter 99, 48 CFR Chapter 1 Part 31, and 2 CFR 200.

SELECTION PROCESS

Work Programs will be reviewed by a consultant selection committee. Consultants will be selected for possible contract negotiations based upon the materials submitted. A copy of the Evaluation Criteria is provided in Attachment 3. The Consultant Selection Committee may choose to interview two or more closely ranked firms but will not expect or schedule time for elaborate presentations. Cost proposals will be opened only after the ranking process is complete.

The City will open contact negotiations with the top ranked firm. The successful consultant will be expected to enter into the City of Cathedral City Standard Design Professional Services Agreement (DPSA). The City's DPSA is included as Attachment 4. Proposed revisions should be addressed in the cover letter. The City reserves the right to make any revisions to the proposed professional services agreement.

Should negotiations with the top-ranked firm dissolve, the City of Cathedral 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 waive informalities and to reject all proposals at its sole discretion. Consultants are encouraged to keep the proposals brief and relevant to the specific work required.

SCHEDULE

Anticipated consultant selection schedule shall be as follows:

Deadline for receipt of Questions	November 11, 2019
Response to Questions	November 14, 2019
Proposal Due Date	**November 21, 2019, 3:00 p.m.**
Proposal Review/Evaluation	Week of November 25, 2019
Interview finalists (if needed)	Week of November 25, 2019
Caltrans Reviews	TBD (If necessary)
Award of Contract	December 11, 2019 (subject to change)

DBE INFORMATION

This project is subject to Title 49 CFR 26.13(b). The selected consultant, and any sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of any contract that results from this solicitation. The selected consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT – assisted contracts. Failure to carry out these requirements would be a material breach of any contract and may result in the termination of the contract or such other remedy as the recipient deems appropriate. Attention is directed to the requirements of Exhibit 10-I "Notice to Proposers DBE Information" provided in Attachment 2.

The selected consultant shall take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises have opportunity to participate in the contract (49 CFR 26).

To ensure there is equal participation of the Disadvantaged Business Enterprise (DBE) groups specified in 49 CFR 26.5, the City of Cathedral City has established a DBE Goal of eleven percent (17%) for this project.

The Agreement will require the consultant to meet the DBE Goals shown above or demonstrate that adequate good faith efforts were made to meet this goal with Exhibit 15-H "DBE Information – Good Faith Efforts". If the DBE Goal provided cannot be met, Exhibit 15-H should be submitted with 10-O1 in the work proposal.

It is each offeror's responsibility to verify that firms are certified as DBE at the date of proposal opening. For a list of DBEs certified by the California Unified Certification Program, go to:

https://ucp.dot.ca.gov/licenseForm.htm

PRE-AWARD AUDIT

In accordance with Caltrans requirements and procedures, the selected consultant's final, negotiated cost proposal may be subject to a pre-award audit by Caltrans and/or the City of Cathedral City. If applicable, the pre-award audit must be complete and approved by Caltrans prior to the City awarding a contract to the selected Consultant.

It is recommended that interested consultants be familiar with Caltrans' audit procedures including contract audits, incurred cost audits, financial management system reviews, ICR audits, and risks assessments. The successful firm will be asked to provide a completed ICR schedule, prepared in accordance with applicable CFRs, a completed AASHTO Internal Control Questionnaire (ICQ), and a copy of the prior fiscal year and most recently completed fiscal year ICR schedules and audited reports by an independent CPA. Additionally, the successful firm must provide a CPA audited ICR report and copy of the CPA audited financial statements.

Offerors that have successfully completed a pre-award audit with Caltrans within the past twelve months should indicate such approval in their proposal and include a copy of the audit approval letter. If the City elects to conduct the pre-award audit in-house, and the selected consultant has successfully completed an audit within the past twelve months, the City will expect the Consultant to furnish its auditors with the details of the approved audit.

ACCEPTANCE/REJECTION/MODIFICATION

The City of 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.

AUTHORITY TO WITHDRAW

The City of Cathedral City reserves the right to withdraw this Request for Proposal (RFP) without prior notice. The City of Cathedral City makes no representation that any agreement will be awarded to any firm as a result of having responded to this request. All proposals

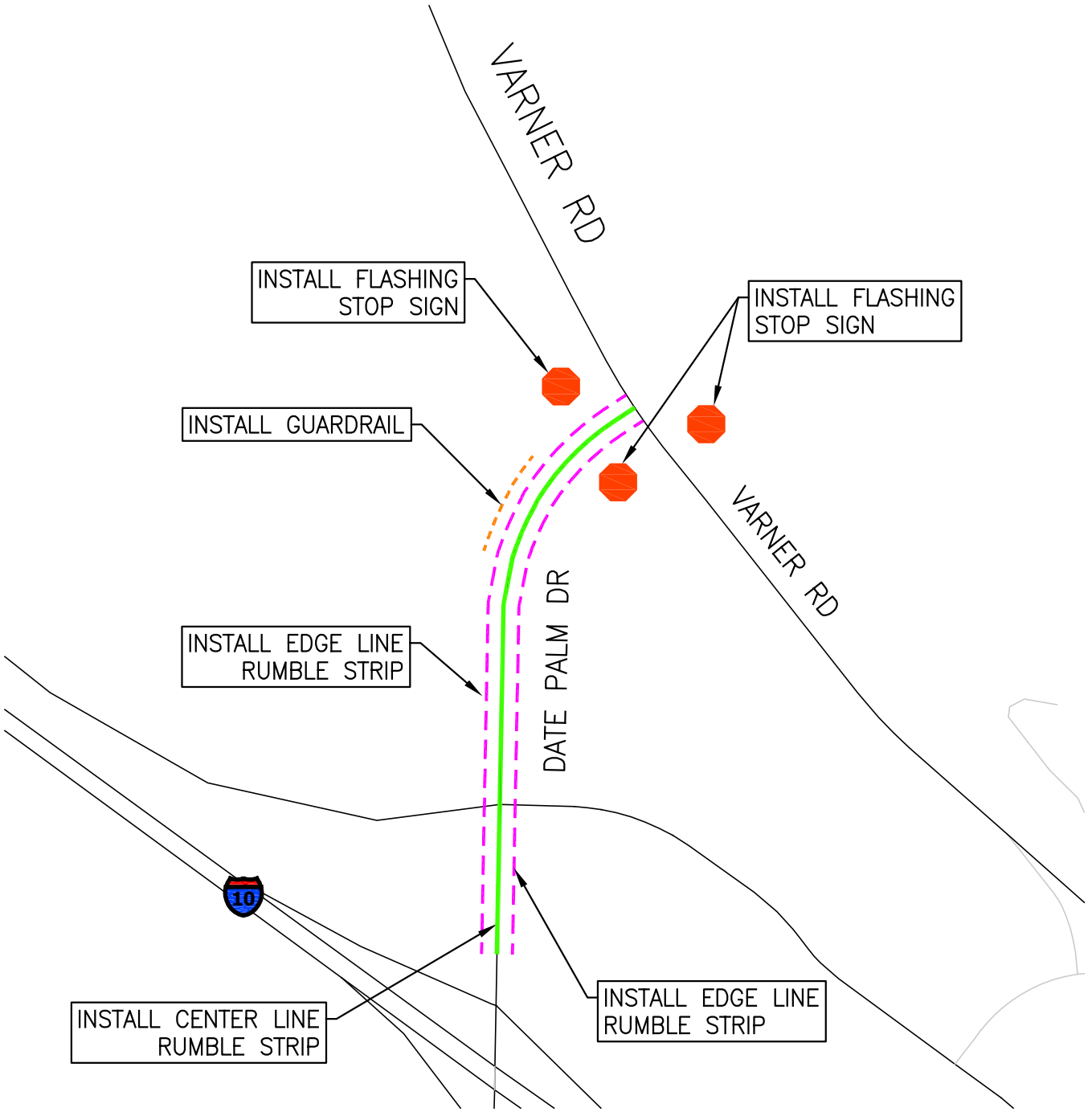
submitted to the City of Cathedral City in response to this RFP shall become the property of the City and will not be returned.

ATTACHMENTS

1. Vicinity Map
2. Federal Forms
3. Evaluation Criteria
4. DPSA

ATTACHMENT 1

VICINITY MAP



INFLUENCE ZONE – CM#1 (R4: GUARDRAIL)

INFLUENCE ZONE – CM#2 (R34: CENTERLINE RUMBLE STRIPS)

INFLUENCE ZONE – CM#3 (R35: EDGELINE RUMBLE STRIPS)

INFLUENCE ZONE – OS#1 (NS7: FLASHING STOP SIGN)

1" = 1000'

500 0 1000 2000 3000

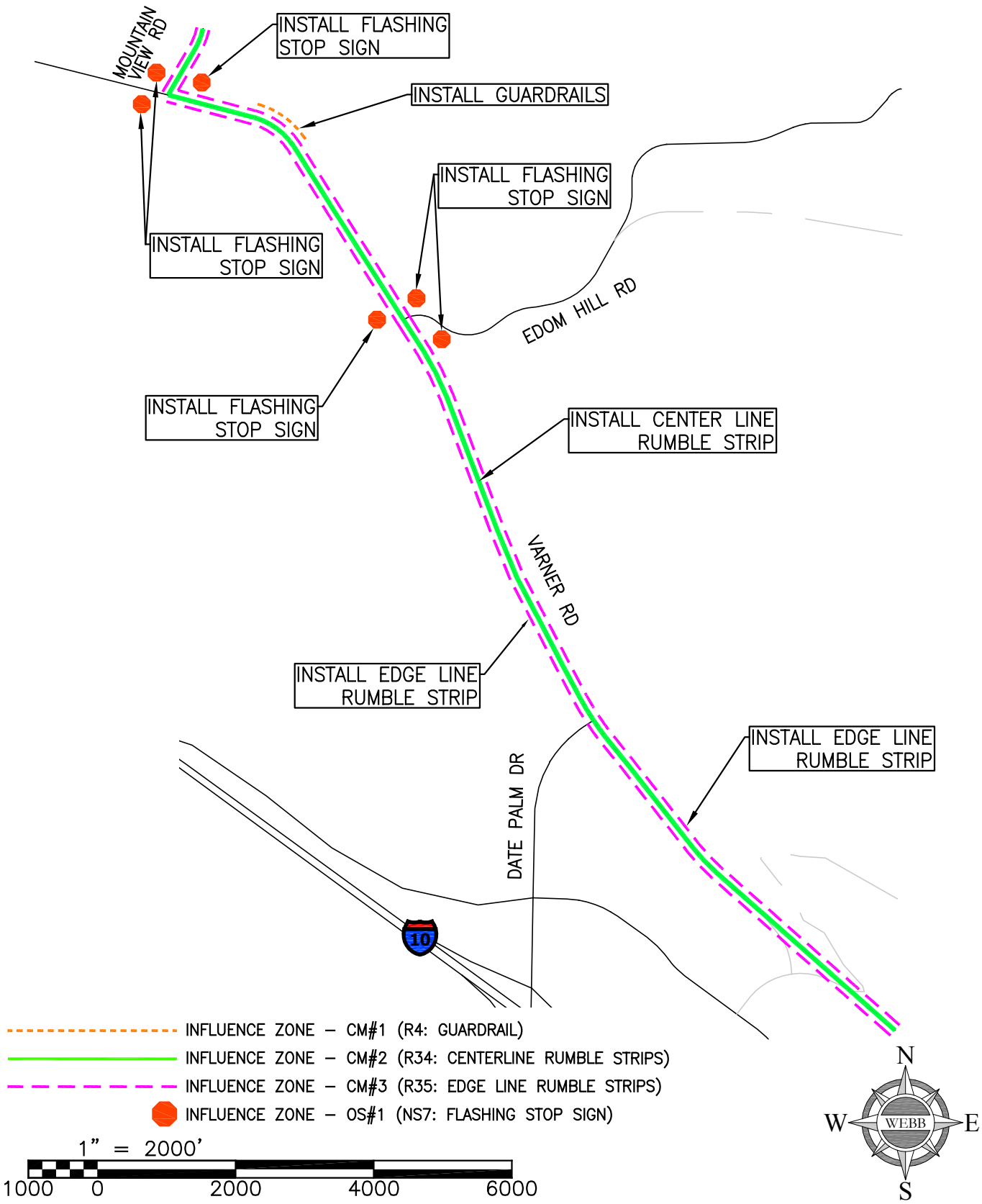
N W E S

PROJECT MAP - PLAN

ROADWAY SEGMENT - DATE PALM DR
FROM I-10 W/B RAMP TO VARNER RD

CITY OF CATHEDRAL CITY

ALBERT A. WEBB ASSOCIATES
ENGINEERING CONSULTANTS
3788 McCRAY STREET
RIVERSIDE CA. 92506
PH. (951) 686-1070
FAX (951) 788-1256



PROJECT MAP - PLAN

ROADWAY SEGMENT - VARNER RD
6,300' E/O DATE PALM DR TO MOUNTAIN VIEW RD

CITY OF CATHEDRAL CITY

ALBERT A. WEBB ASSOCIATES
ENGINEERING CONSULTANTS
3788 McCRAY STREET
RIVERSIDE CA. 92506
PH. (951) 686-1070
FAX (951) 788-1256

ATTACHMENT 2

FEDERAL FORMS

INCLUDING
10-O1: Consultant Proposal DBE Commitment

15-H: DBE Information – Good Faith Efforts

10-H: Sample Cost Proposal

10-K: Consultant Annual Certification of Indirect Costs and Financial Management System

10-I: Notice to Proposers DBE Information

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: City of Cathedral City 2. Contract DBE Goal: 17%
3. Project Description: Construct Centerline and Edge Rumble Strips, Install Flashing Stop Signs, Install Guardrail
4. Project Location: Date Palm btw I-10 and Varner, Varner Road between Mountain View and Bob Hope
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

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.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION %

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

12. Preparer's Signature _____ 13. Date _____

14. Preparer's Name _____ 15. Phone _____

16. Preparer's Title _____

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

EXHIBIT 15-H: DBE INFORMATION -GOOD FAITH EFFORTS

Federal-aid Project No(s). HSIPL-5430(035) Bid Opening Date November 21, 2019

The City of Cathedral City established a Disadvantaged Business Enterprise (DBE) goal of 17% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

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

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

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

Publications	Dates of Advertisement

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

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

C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to met or exceed the DBE contract goal.

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

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

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

_____
_____
_____
_____

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

_____
_____
_____
_____

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

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

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

Name of Agency/Organization	Method/Date of Contact	Results

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

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

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

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

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

LABOR COSTS

a) Subtotal Direct Labor Costs $ _____

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

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

INDIRECT COSTS

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

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

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

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

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

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

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

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

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

Subconsultant 1: _____ $ _____

Subconsultant 2: _____ $ _____

Subconsultant 3: _____ $ _____

Subconsultant 4: _____ $ _____

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

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

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

NOTES:

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

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

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

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

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

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

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

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

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

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

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

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

NOTES:

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

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

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

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

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *:_____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

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

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

Consultant's Full Legal Name: _____

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

Indirect Cost Rate:

Combined Rate _____ % **OR**

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

Facilities Capital Cost of Money_____% (if applicable)

Fiscal period *_____

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

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

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

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

Financial Management System:

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

Our financial management system has the following attributes:

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

accounts;

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

Cost Reimbursements on Contracts:

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

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

All A&E Contract Information:

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

☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

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

Name**:_____ Title**: _____

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

Email**: _____ Phone Number**: _____

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

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

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

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of _____17_____%

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.

ATTACHMENT 3

EVALUATION CRITERIA

REQUEST FOR QUALIFICATIONS EVALUATION

Project Name:

Consultant:_____

Reviewer:_____ **Date:**_____

Understanding of work to be done	30	
Experience with similar kinds of work	25	
Quality of staff for work to be done	20	
Familiarity with State and Federal procedures	15	
Format/Organization	10	
Total	**100**	

Scoring Breakdown:

Understanding of work to be done - 30 points maximum
- 0-15: Project understanding is off topic or is missing more than 5 key elements.
- 16-25: Project understanding is understandable but missing a few key elements.
- 26-30: Project understanding well justified and most or all key elements are included.

Experience with similar kinds of work - 25 points maximum
- 0-10 points: Consultant does not include previous experience or has very minimal experience.
- 16-20 points: Consultant lists previous experience, but experience is not relevant or similar.
- 21-25 points: Consultant lists relevant previous experience with similar work.

Quality of staff for work to be done - 20 points maximum
- 0-8 points: Resumes not included or staff has little to no experience with similar project.
- 9-15 points: Staff list includes resumes but experience is not relevant or similar.
- 16-20 points: Staff has relevant experience and is competent to perform scope requested.

Familiarity with State and Federal Procedures - 15 Points Maximum
- 0-4 points: Zero to little previous Federal and State project experience
- 5-10 points: Federal and State experience but not on similar work.
- 11-15 points: Relevant Federal and State Experience.

Format/Organization - 10 points maximum
- 0-4: Scope of work is not or barely organized into tasks and subtasks, does not flow clearly.
- 5-7: Scope of work is organized into tasks and subtasks, but not in a clear logical order.
- 8-10: Scope of work is well organized into logical tasks and subtasks to complete a project.

TOTAL _____

Reviewer's Signature _____

Contract Administrator's Initials _____ **Date** _____

REQUEST FOR QUALIFICATIONS EVALUATION NOTES

Project Name:

Consultant:_____

Reviewer:_____ **Date:**_____

Unique Qualities (Intangibles):
(Explanation)_____
_____
_____
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_____

Comments:_____
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ATTACHMENT 4

DESIGN PROFESSIONAL SERVICES AGREEMENT

AGREEMENT FOR
PROFESSIONAL SERVICES
BETWEEN
THE CITY OF CATHEDRAL CITY, CALIFORNIA
AND
[CONSULTANT]

This Agreement for Professional Services ("Agreement") is entered into as of [Month dd], 2019 ("Effective Date") by and between the City of Cathedral City, a municipal corporation ("City") and [Name], a California Corporation ("Consultant"). City and Consultant 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 Construction Management services for the **Date Palm Drive and Varner Road Safety Improvements**, **Federal Project Number HSIPL-5430(035), City Project Number 8751**, defined and described particularly in Section 2 of this Agreement.

B. Consultant, 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. Consultant was selected by the City on the basis of Consultant'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 Consultant Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Consultant 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:

SECTION 1. TERM OF AGREEMENT.

(a) Subject to the provisions of Section 28 "Termination of Agreement" of this Agreement, the Agreement shall go into effect on the Effective Date, and Consultant shall

commence work after notification to proceed by the City Contract Administration. The agreement shall terminate on December 30, 2022, unless extended by contract amendment.

(b) Consultant is advised that any recommendation for award is not binding on City until the Agreement is fully executed and approved by City.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Consultant 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.

(b) 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 Consultant 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 Consultant to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Consultant 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 35 "Administration and Implementation" or Section 37 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

SECTION 4. SAFETY.

(a) Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by City Safety Officer and other City representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

(b) Pursuant to the authority contained in Vehicle Code §591, City has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

(c) CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

SECTION 5. COMPENSATION AND METHOD OF PAYMENT.

(a) The method of payment for this Agreement will be based on lump sum. The total lump sum price paid to Consultant will include compensation for all work and deliverables, including travel and equipment. No additional compensation will be paid to Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between Consultant and City. Adjustment in the total lump sum compensation will not be effective until authorized by Agreement amendment and approved by the City.

(b) Progress payments may be made monthly in arrears based on the percentage of work completed by Consultant. If Consultant fails to submit the required deliverable items according to the schedule, City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 28 "Termination of Agreement".

(c) Consultant shall not commence performance of work or services until this Agreement has been approved by City and notification to proceed has been issued by City Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

(d) Consultant will be reimbursed within thirty (30) days upon receipt by City Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this project number and project title. Final invoice must contain the final cost and all credits due City that include any equipment purchased under the provisions of Section 12 “Equipment Purchase”. The final invoice must be submitted within sixty (60) calendar days after completion of Consultant’s work unless a later date is approved by the City. Invoices shall be mailed to the City in accordance with Section 33 “Notices”.

(e) The total amount payable by City shall not exceed $_____.

SECTION 6. COST PRINICPLES AND ADMINISTRATIVE REQUIREMENTS.

(a) The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

(b) The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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

(d) When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

SECTION 7. AUDIT REVIEW PROCEDURES.

(a) Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement, shall be reviewed by City's Chief Financial Officer.

(b) Not later than thirty (30) days after issuance of the final audit report, Consultant, may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

(c) Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

(d) Consultant and subconsultant Agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, and incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, Cost Proposal and ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, it is Consultant's responsibility to ensure federal, state, or local government officials are allowed fully access to the CPA's work papers including making copies as necessary. The Agreement, Cost Proposal, and ICR shall be adjusted by Consultant and approved by City to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement pursuant to Section 28 "Termination of Agreement" and disallowance of prior reimbursed costs.

(e) Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the City to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement pursuant to Section 28 "Termination of Agreement" and disallowance of prior reimbursed costs.

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

Accepted rates will be as follows:

a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

(ii) If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

(iii) If the Consultant fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

(iv) Consultant may submit to City final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of City; and, (3) Caltrans A&I has issued its final ICR review letter. The Consultant must submit its final invoice to City no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between City and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

SECTION 8. DISPUTES.

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

(a) Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of City Manager and City Engineer, who may consider written or verbal information submitted by Consultant.

(b) Not later than 30 days after completion of all work under the Agreement, Consultant may request review by City Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

(c) Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

SECTION 9. SUBCONTRACTING.

(a) Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any subconsultant(s), and no sub-agreement shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to Consultant.

(b) Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization in accordance with Section 35 "Administration and Implementation" of this Agreement, except that, which is expressly identified in the approved Cost Proposal.

(c) Any sub-agreement entered into as a result of this Agreement, shall contain all the provisions stipulated in this entire Agreement to be applicable to Subconsultants unless otherwise noted.

(d) Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by City.

(e) Any substitution of subconsultant(s) must be approved in writing by City in accordance with Section 35 "Administration and Implementation" of this Agreement in advance of assigning work to a substitute Subconsultant.

SECTION 10. RETENTION OF FUNDS.

(a) Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this section.

(b) No retainage will be withheld by City from progress payments due the Consultant. Retainage by the Consultant or subconsultants is prohibited, and no retainage will be held by the Consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE Consultant and subconsultants.

SECTION 11. DISADVANTAGED BUSINESS ENTERPRISES (DBE).

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

(b) The goal for DBE participation for this Agreement is 17.0%. 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 Commitment (Exhibit 10-O2) attached hereto under Exhibit B "Consideration" and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(c) Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

(d) 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. The City, Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. 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 Agreement, which may result in the termination of this

Agreement pursuant to Section 28 “Termination of Agreement” or such other remedy as City deems appropriate, which may include but is not limited to:

(i) Withholding monthly progress payments;

(ii) Assessing sanctions;

(iii) Liquidated damages; and/or

(iv) Disqualifying the Consultant from future bidding as non-responsible

(e) A DBE firm may be terminated only with prior written approval from 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). 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.

(f) Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the City.

(g) A DBE is only eligible to be counted toward the Agreement goal if it performs a commercially useful function (CUF) on the Agreement. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

(h) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

(i) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

(j) Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and

business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

(k) Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants", certified correct by Consultant or Consultant's authorized representative and shall be furnished to the City 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 City.

(l) 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 City within 30 days.

(m) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

SECTION 12. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES.

(a) Prior authorization in writing, by City in accordance with Section 35 "Administration and Implementation" of this Agreement shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars ($5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

(b) For purchase of any item, service, or consulting work not covered in the Consultant's approved Cost Proposal and exceeding five thousand dollars ($5,000), with prior authorization by City in accordance with Section 35 "Administration and Implementation" of this Agreement; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

(c) Any equipment purchased as a result of this Agreement is subject to the following:

(i) Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars ($5,000) or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated pursuant to Section 28 "Termination of Agreement" of this Agreement, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such

equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.

(ii) Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project.

SECTION 13. INSPECTION AND FINAL ACCEPTANCE.

Consultant and any subconsultant shall permit City, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the Term of Agreement including review and inspection on a daily basis. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant'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 Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 24 "Indemnification" and Section 25 "Insurance."

SECTION 14. OWNERSHIP OF DOCUMENTS.

(a) It is mutually agreed that all materials prepared by Consultant under this Agreement shall become the sole property of City, and Consultant shall have no property right therein whatsoever. Immediately upon completion, expiration or termination, City shall be entitled to, and Consultant shall deliver to City, all original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, investigations, appraisals, inventories, analyses, estimates, and other documents prepared, developed or discovered by Consultant in the course of providing the Services pursuant to this Agreement to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

(b) Additionally, it is agreed that the Parties intend this to be an Agreement for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its

use or dissemination by City, and may be used, reused or otherwise disposed of by City without the permission of the Consultant.

(c) Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk. 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, investigations, appraisals, inventories, analyses, estimates, or other documents prepared, developed or discovered by Consultant in the course of providing the Services pursuant to this Agreement, Consultant's guarantees and warranties in Section 17 "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, investigations, appraisals, inventories, analyses, estimates, or other documents.

(d) Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

(e) City may permit copyrighting reports or other agreement products. If copyrights are permitted; the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

SECTION 15. CONSULTANT'S BOOKS AND RECORDS.

(a) For the purpose of determining compliance with Gov. Code § 8546.7, Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of the Services. The Consultant, Subconsultants, and City shall maintain any and all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement, including, but not limited to, the costs of administering the Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of

such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement. The state, State Auditor, City, 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.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 16. INDEPENDENT CONTRACTOR.

(a) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant 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.

(b) The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant'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 Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 17. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.

(a) Consultant 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. Consultant 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, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in

providing services similar to the Services required of Consultant under this Agreement, and shall use such skill, prudence, and diligence as other members of Consultant'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 Consultants 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.

(b) Consultant 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.

SECTION 18. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Consultant 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. Consultant 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 Consultant to comply with this section.

SECTION 19. STATE PREVAILING WAGE RATES.

(a) No Consultant or Subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.

(b) The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer

http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf.

These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the

facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

(c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at http://www.dir.ca.gov.

(d) Payroll Records

(i) Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

(ii) The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representative's at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

(2) A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

(3) The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the City Contract Administrator by both email and regular mail on the business day following receipt of the request.

(iii) Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

(iv) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or Subconsultant performing the work shall not be marked or obliterated.

(v) The Consultant shall inform City of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(vi) The Consultant or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

(e) When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City.

(f) Penalty

(i) The Consultant and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any Subconsultant shall forfeit to the City a penalty of not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

(ii) The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor Code. The Consultant

is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.

(iii) In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.

(iv) If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

(1) The Agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

(3) Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

(4) Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

(v) Pursuant to Labor Code §1775, City shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

(vi) If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

(g) Hours of Labor

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

(h) Employment of Apprentices

(i) Where either the prime Agreement or the sub-agreement exceeds thirty thousand dollars ($30,000), the Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

(ii) Consultants and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at https://www.dir.ca.gov/das/, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the Agreement work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

SECTION 20. 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 City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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

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

(f) Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

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

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

SECTION 21. CONFLICTS OF INTEREST.

(a) Consultant 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 Consultant's performance of the Services. Consultant 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. Consultant 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.

(b) City may determine that Consultant 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, Consultant 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.

(c) City understands and acknowledges that Consultant 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. Consultant 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.

(d) City understands and acknowledges that Consultant 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.

(e) During the term of this Agreement, the Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement or any ensuing City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing City construction project which will follow.

(f) Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

(g) The Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(h) The Consultant hereby certifies that the Consultant or subconsultant and any firm affiliated with the Consultant or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this Agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

SECTION 22. REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION.

The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the

work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

SECTION 23. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All financial, statistical, personal, technical, or other data and information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant 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.

(b) Consultant, 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 Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(e) Permission to disclose information on one occasion, or public hearing held by City relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

(f) Consultant shall not comment publicly to the press or any other media regarding the Agreement or City's actions on the same, except to City's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

(g) Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement

without prior review of the contents thereof by City, and receipt of City's written permission.

(h) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

SECTION 24. INDEMNIFICATION.

(a) Indemnification by Consultant. As provided under Civil Code Section 2782.8, Consultant 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 Consultant, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant 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 Consultants, and Consultant, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence.

(b) Indemnification from Subcontractors. Consultant 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 Consultant in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant 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 Consultant and shall survive the termination of this Agreement or this section.

(c) 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.

SECTION 25. INSURANCE.

Consultant 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. Consultant agrees to provide City with copies of required policies upon request.

SECTION 26. ASSIGNMENT.

The expertise and experience of Consultant 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 Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant'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 28 "Termination of Agreement." City acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 27. CONTINUITY OF PERSONNEL.

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the Services. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance. There shall be no change in Consultant's Project Management or members of the project team, as listed in the approved Cost Proposal without prior written approval by City pursuant to Section 35 "Administration and Implementation" of this Agreement.

SECTION 28. TERMINATION OF AGREEMENT.

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

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

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

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in Section 5 "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 5 "Compensation and Method of Payment" of this Agreement.

(e) City may temporarily suspend this Agreement, at no additional cost to City, provided that Consultant is given written notice of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities

under this Agreement. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

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

(g) In the event of termination, Consultant shall be compensated as provided for in this Agreement, except as provided in Section 12 Equipment Purchase and Other Capital Expenditures Part C.

SECTION 29. DEFAULT.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant 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 Consultant 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 Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under Section 28 "Termination of Agreement." Any failure on the part of the City to give notice of the Consultant'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.

SECTION 30. EXCUSABLE DELAYS.

Consultant 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 Consultant. 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.

SECTION 31. CLAIMS FILED BY CITYS CONSTRUCTION CONTRACTOR.

(a) If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

(b) Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

(c) Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

SECTION 32. 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 Consultant in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

SECTION 33. 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 Consultant:	[Contractor Name of Firm] Attn: [Contractor Person in Charge] [Street, Number, Apt.,..] [City, State, Zip]

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.

SECTION 34. AUTHORITY TO EXECUTE.

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

SECTION 35. 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 37 “Amendment” and the City Manager’s contracting authority under the Cathedral City Municipal Code.

SECTION 36. BINDING EFFECT.

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

SECTION 37. AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant 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. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been issued. There shall be no change in Consultant’s Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Agreement without prior written approval by City.

SECTION 38. 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 Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 39. 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.

SECTION 40. 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.

SECTION 41. CONTINGENT FEE.

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

SECTION 42. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING.

(a) Consultant certifies to the best of his or her knowledge and belief that:

(i) No State, Federal, or City 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.

(ii) 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 sub-agreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

SECTION 43. DEBARMENT AND SUSPENSION.

(a) The Consultant’s signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT

or any person associated therewith in the capacity of owner, partner, director, officer or manager:

(i) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

(ii) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

(iii) Does not have a proposed debarment pending; and

(iv) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

(b) Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

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

SECTION 44. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.

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

SECTION 45. 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 Consultant 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.

SECTION 46. 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).

SECTION 47. 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

_____
Charles P. McClendon
City Manager

ATTEST:

_____
Tracey R. Martinez
City Clerk

APPROVED AS TO FORM

_____
Eric S. Vail
City Attorney

[CONTRACTOR]

_____
By:_____
Its:_____

_____
By:_____
Its:_____

NOTE: CONSULTANT'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 CONSULTANT'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.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited ¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other: _____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
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)

Signer's Name: _____

¨ Individual
¨ Corporate Officer

_____
Title(s)

¨ Partner(s) ¨ Limited ¨ General

¨ Attorney-In-Fact
¨ Trustee(s)
¨ Guardian/Conservator
¨ Other: _____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
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.