

**REQUEST FOR PROPOSALS (RFP)
FOR
WILLITS STREET SAFE ROUTES TO SCHOOL PROGRAM**

RFP NO.: 21-110



**CITY OF SANTA ANA
Public Works Agency
20 Civic Center Plaza, M-43
Santa Ana, CA 92701**

**RUBEN CASTANEDA
Project Manager
(714) 647-5621 Office
rcastaneda@santa-ana.org**

Approved for Release:

Zdenek Kekula
Principal Civil Engineer
Public Works Agency

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

Issue Date:	Tuesday, October 19, 2021
Deadline for Requests for Information:	Tuesday, November 2, 2021
Proposal Due Date:	Tuesday, November 9, 2021 – 2:00 p.m.
Projected Award Date:	Tuesday, January 18, 2022



NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for Willits Street Safe Routes to School Program.

Responses to this Request for Proposals (RFP) must be submitted electronically to the PlanetBids system no later than **November 9, 2021 at 2:00 p.m.** Proposals received after this date/time will not be considered. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Santa Ana prior to this proposal due date and time.

Additionally, it is a requirement that hard copy proposals also be sent by courier service, mailed, or hand delivered in an enclosed sealed envelope and marked clearly with the following

“SEALED PROPOSAL FOR
WILLITS STREET SAFE ROUTES TO SCHOOL PROGRAM
RFP NO. 21-110
IN THE CITY OF SANTA ANA
DO NOT OPEN WITH REGULAR MAIL.”

City of Santa Ana
Attn.: Ruben Castaneda
Public Works Agency; M-43
20 Civic Center Plaza; Ross Annex
Santa Ana, CA 92701

For further instructions regarding hard copy submission of proposals, refer to PlanetBids.

All notifications, requests for information, updates and addenda will be posted online on PlanetBids at <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137>. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive qualification.



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I. INTRODUCTION / PROJECT DESCRIPTION

Nature of Work:

The City of Santa Ana is seeking outreach and bicycle safety education services. A detailed Scope of Work is attached herein as Attachment A, as part of the Appendix.

Number of Proposals and Signature:

Five (5) hard copies are required to accompany an electronic submittal of the complete proposal package on PlanetBids. One of the hard copies shall be marked as “ORIGINAL” and be signed by a company official with the power to bind the company, and submitted to the City of Santa Ana. *Please be explicit in identifying the appropriate person with legal authority to bind the company.*

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

Proposal Evaluation and Rating:

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

- | | |
|-------------------------------|-----|
| • Firm/Team Experience | 20% |
| • Understanding of Need | 25% |
| • Relevant Project Experience | 20% |
| • Local Community Experience | 35% |

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

Project Funding:

Project is funded with Federal Active Transportation Program grant funds administered by the California Department of Transportation (Caltrans). Special conditions shall apply. Refer to Attachments 1 (Scope of Work) in the Appendix of this RFP for further information.



Term of Contract Agreement:

The City desires to enter into a contract with the top scoring firm for an initial two (2) year term with a City option for one (1) one (1) year extension period. This term is outlined in the Standard Consultant Agreement, as contained in the Appendix of this RFP as Attachment 2.



II. INSTRUCTIONS TO PROPOSERS

A. CITY RESPONSIBILITIES

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

B. PROPOSER RESPONSIBILITIES

Point of Contact: The selected proposer will assume responsibilities for all services in its proposal. The selected proposer shall identify a sole point of contact with the greatest knowledge concerning the required service operations and contractual matters, including payment of all charges resulting from the Agreement. Contact information such as email and phone number must be included into the proposal.

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

C. REQUEST FOR INFORMATION OR CLARIFICATION

All questions or requested clarifications shall be made only in writing to the Q&A section located in PlanetBids no fewer than five (5) calendar days prior to the date and time set for opening of proposals. No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP.

D. ADDENDA

Any changes in RFP from the date of release to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment shall be posted on PlanetBids at <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137> as set forth in the Notice Inviting Proposals. Addenda shall become part of the agreement documents.

E. LICENSES & PERMITS

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

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



F. INSURANCE

The Selected Proposer shall provide the required evidence of insurance coverage as set forth in the Scope of Work within ten (10) business days after receipt of notice that the contract has been awarded. Failure to provide the required insurance certificates shall be cause for the annulment of the award and the forfeiture of the proposal guaranty. The City will provide the Selected Proposer with a “New Vendor Checklist”, which outlines insurance requirements.

G. PAYMENT INFORMATION PACKET

The selected proposer shall return a completed payment information packet within ten (10) business days after the successful proposer has received notice that the contract has been awarded.

H. PRE-PROPOSAL MEETING

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

I. CITY RIGHT TO REJECT

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

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

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

J. BID PROTESTS

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



III. SUBMITTAL REQUIREMENTS

A. GENERAL

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

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION

2. Deadline:

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

B. PROPOSAL CONTENTS

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

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION

1. STATEMENT OF QUALIFICATIONS

- a. Cover Letter: Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
- b. Contract Agreement Statement: Proposal shall include a statement outlining your concurrence or concerns with any and all provisions contained in the Agreement attached herein as Attachment 2 in the Appendix.
- c. Firm and Team Experience: Proposal shall include a profile of the firm's experience. Include resumes of project team/sub-consultants that will be providing services which outline their technical and design experience. At a minimum, this should include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, firm size, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual's time devoted to this project. The project manager/principal agent shall be the primary contact person to represent your firm and will be the person to conduct the presentation, if invited for an interview.



- d. Understanding of Need: Proposal shall include an outline which demonstrates the firm's understanding of the work. This outline should include anticipated approach, tasks necessary for successful completion, deliverables, and suggestions or special concerns that the City should be made aware of. Identify any assumptions and/or exclusions used in preparation of the scope of work and associated fee estimate.
- e. Relevant Project Experience: Proposal shall include a list of relevant projects, which your firm or personnel have completed within the last 5 years, including significant work with public agencies. Project information should include project description, project location, year completed, and client name and contact information. City of Santa Ana staff may conduct site visits at select projects.
- f. References: Proposals shall include a listing of relevant projects with references for three public entities with valid current emails for which Proposer has performed similar work within the past five (5) years.

2. SCOPE OF SERVICES AND SCHEDULE:

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

3. FEE PROPOSAL:

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

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



4. **CERTIFICATIONS:**

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

- Attachment 3-1: Non-Collusion Affidavit
 - Attachment 3-2: Non-Lobbying Certification
 - Attachment 3-3: Non-Discrimination Certification
- ❖ Caltrans Exhibits as referenced in Attachment 1 Scope of Work under Special Provisions (also referenced in Attachment 4)

IV. PROPOSAL REVIEW (CONSULTANT SELECTION)

A. EVALUATION AND RATING

The criteria for evaluating the proposals are specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

B. SELECTION

The selection committee will be comprised of at least (3) City staff from multiple departments. The committee may interview the top ranking proposers. The City will recommend award of contracts to the proposers who will provide the best value to the City. The City reserves the right to begin negotiations and enter into a contract without interview or further discussions.

V. CONTRACT AWARD

A. REQUEST FOR COUNCIL ACTION

Following evaluation and rating by the proposal review committee and acceptance from Funding agency following financial audit, the Project Manager will recommend award contracts to the three top-ranking proposers that will provide the best value to the City.

B. EXECUTION OF AGREEMENT

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

VI. IMPLEMENTATION

A. KICK-OFF MEETING

A kick-off meeting will be held after award of contracts. Consultants and their team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation processes.



B. NOTICE TO PROCEED

Prior to issuance of a formal Notice to Proceed (NTP), Consultants shall provide all required bonds, insurance documents, and contents of the Information Packet for review and approval by the City.

For “On-Call” contracts, individual City Project Managers will request project/task specific proposals from Consultants on an as-needed basis. Proposals will then be evaluated by City staff and written NTPs will be issued accordingly per each task order.

VII. PUBLIC RECORDS

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

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

**Appendix
ATTACHMENT 1
SCOPE OF WORK**

**CITY OF SANTA ANA
REQUEST FOR PROPOSALS
FOR
WILLITS STREET SAFE ROUTES TO SCHOOL PROGRAM
RFP NO. 21-110**

INTRODUCTION/BACKGROUND

The Willits Street Safe Routes to School Program at three public schools in the City of Santa Ana will focus on Education, Encouragement, Enforcement, and Non-Construction Engineering components that are in accordance with best practices in Safe Routes to Schools. Students will participate in a total of twelve (12) workshops that provide education in safe urban cycling, a total of fifteen (15) basic bike mechanic skills workshops and a total of nine (9) group bike rides that will encourage ridership on bicycle infrastructure.

The Willits Street Safe Routes to School Program will educate students on safe urban cycling and basic bike repair skills. The program will encourage ridership by training students on how to ride on bike lanes individually and in groups. Once the program culminates, participating students will receive a certificate that identifies them as school bike ambassadors. Students will gain knowledge and experience related to bike safety measures and will be able to provide workshops to other students in their respective schools.

The consultant will work directly with the following schools: (1) Carr Intermediate, (2) Valley High School, and (3) Godinez High School and will use a multi-faceted approach to accomplish the objectives of pedestrian and bicycle safety as effective ways to commute to and from school. The consultant is encouraged to introduce new ideas and activities related to educating students, faculty, and parents about pedestrian and bicycle safety. Additionally, the consultant will be required to establish best practices available at the time of performing the tasks of this educational program in order to adopt and comply with the latest corresponding health department guidelines as they relate to COVID-19 pandemic. This program will be accomplished through the following tasks, which include but are not limited to:

Task 1: Safe Urban Cycling Workshops–

The consultant will be responsible for scheduling and conducting four (4) safe urban cycling workshops at each school for a total of twelve (12) workshops, over the two (2) year contract period for the Willits Street Safe Routes to School Program. The consultant will be required to provide the City of Santa Ana with a scope of educational activities and materials such as web resources, brochures, newsletters, and walking/biking safest route maps. Safe urban cycling workshops will be taught both in English and Spanish; these workshops are designed to increase bicyclist's safety awareness of common car/bike collisions, teach ways to prevent and avoid

crashes and collisions, and emphasize the importance of helmet use when riding a bicycle. Additionally, the rights and responsibilities of cyclists must be discussed during the Safe Urban Cycling Workshops and Group Bike Rides in order to help increase the number of cyclists riding safely and legally. The workshops will also offer students a theoretical explanation of vehicular cycling principles supported by relevant examples of safe cycling using audio/visual and group learning techniques. Students are required to complete the workshops prior to participating on the Group Bike Rides.

Task 2: Basic Bike Mechanic Skills Workshops–

Five (5) basic bike mechanic skills workshops will be conducted for each participating school for a total of fifteen (15) workshops, over the two (2) year contract period for the Willits Street Safe Routes to School Program. The main objective of these workshops is to teach and prepare students on how to respond in case of flat tires and/or any other bike mechanical issue. The consultant must provide instructional videos and educational materials related to repair and maintenance of bicycles; as well as hands-on opportunities to work on bicycles. The consultant will be required to inform students about the different locations of bicycle parking along the safe routes to school; as well as, to show how bicycles are safely locked. The completion of the Basic Bike Mechanic Skills workshops is also a prerequisite for attending the Group Bike Rides.

These workshops will provide practical application of the theoretical element to give each student fundamental knowledge and understanding of maintaining and repairing flat tires and bike mechanical issues in order to improve safety and prevent accidents. Following each workshop, surveys will be conducted to collect comments and ideas from both students and instructors to improve and expand future Safe Routes to School workshops. The data collected by conducting surveys will allow the City to monitor and evaluate objectives and results of its Bicycle and Pedestrian Initiatives.

Task 3: Group Bike Rides–

The selected consultant will be responsible for scheduling and conducting three (3) Group Bike Rides with participants from all three participating schools for a total of nine (9) group bike rides, over the two (2) year contract period for the Willits Street Safe Routes to School Program. The Group Bike Rides are opportunities to put into practice the knowledge gained during the Safe Urban Cycling and Basic Bike Mechanic Skills workshops. The main goal of this task is to encourage and increase safe youth bike ridership. Group Bike Rides will allow the consultant to teach and train students about Santa Ana City Complete Streets concepts, design, and safety policies and regulations. Riding bikes in groups will teach students how to properly ride on bike lanes, to identify safe bicycle routes and parking in the area, and to effectively respond in case of an emergency or bike mechanical issue. The consultant will be required to furnish and provide cones, vests, reflective gear, patch kits, and water bottles during the Group Bike Rides. Finally, the consultant will be in charge of conducting surveys after each group bike ride in order to collect data that shows students' input on how to improve and enhance the Santa Ana City's Safe Routes to School Program.

SPECIAL REQUIREMENTS (ATTACHMENT 4)

This project will utilize California Department of Transportation (Caltrans) funds and shall therefore comply with all state and federal requirements. The below referenced forms included in Attachment 4 (Additional Provisions) of the Appendix must be completed in their entirety and submitted with your proposal:

- LAPM Exhibit 10-H: Sample Cost Proposal
- LAPM Exhibit 10-O1: Consultant Proposal DBE Commitment
- LAPM Exhibit 10-O2: Consultant Contract DBE Commitment
- LAPM Exhibit 10-K: Consultant Certification of Contract Costs and Financial management System

Please reference Caltrans Local Assistance Procedure Manual, Consultant Selection, Chapter 10, for further instructions and guidelines pertaining to the completion of these forms: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf>

COMPLIANCE WITH REQUIREMENTS OF FUNDING AGENCY:

This agreement may be funded with state and/or federal grant funds administered by Caltrans. Proposer shall comply with all requirements as they pertain to the use of these funds. Refer to Attachment 4 for Caltrans required forms, including **Exhibit 10-H – Sample Cost Proposal** (H2 for On-Call Contracts) in the Appendix of this RFP.

DISADVANTAGED BUSINESS ENTERPRISES (DBE) GOAL:

The Agency has established a DBE goal for this Contract. Proposers are encouraged to obtain DBE participation for this contract. Refer to **Exhibit 10-I – Notice to Proposers DBE Information** included in the Appendix of this RFP. Proposers must submit **Exhibits 10-O1 & 10-O2 – Consultant Proposal & Contract DBE Commitment** to demonstrate compliance with Agency's DBE goal.

CONSULTANT AUDIT AND REVIEW PROCESS:

Prior to contract award and dependent on contract award amount, the selected Consultant shall be subject to an audit or review by Caltrans' Audit and Investigations (A&I), other state audit organizations, or the federal government. The selected Consultant shall complete **Exhibit 10-K – Consultant Annual Certification of Indirect Costs and Financial Management System** for all prime and sub-consultants in the Appendix of this RFP.

To independently download any of the Caltrans Exhibits required per this RFP, visit: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

**Appendix
ATTACHMENT 2
SAMPLE AGREEMENT**

**AGREEMENT TO PROVIDE
WILLITS STREET SAFE ROUTES TO SCHOOL PROGRAM**

THIS AGREEMENT is made and entered into this ___st day of _____, 2022 by and between _____ (“Consultant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

RECITALS

- A. The Santa Ana Public Works Agency was awarded a grant from the State of California Active Transportation Program for a program to address bicycle safety through a series of student bicycle safety education workshops and events. The goal of the program is to reduce the number of persons killed or injured in collisions involving bicycles.
- B. On October 19, 2021, the City issued Request for Proposal No. 21-110, by which it sought a consultant to provide such bicycle safety program.
- C. Consultant submitted a responsive proposal that was among those selected by the City. Consultant represents that it is able and willing to provide the services described in the scope of work that was included in RFP No. 21-110 and that is attached as Exhibit A.
- D. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional contracting firm in the field.

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

1. SCOPE OF SERVICES

Consultant shall perform the services that were described in the scope of work that was included in RFP No. 21-110 and as more specifically delineated in Consultant’s proposal, which is attached as Exhibit A and incorporated in full.

2. ALLOWABLE COSTS AND PAYMENTS

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services

under this Agreement, the rates and charges identified in Exhibit B. The total sum to be expended under the term of this Agreement, including any extension periods, shall not exceed \$ [REDACTED]. This sum is comprised of (1) the base amount of \$ [REDACTED] and (2) a contingency in the amount of \$ [REDACTED] for additional services at the City's sole discretion.

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

3. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

4. PERFORMANCE PERIOD

- a. This Agreement shall go into effect on the date first written above, contingent upon approval by City, and Consultant shall commence work after notification to proceed by City. This Agreement shall end on **January 31, 2024**, unless terminated earlier in accordance with Section 21. The term of this Agreement may be extended for up to one 1-year periods upon a writing executed by the City Manager and City Attorney.
- b. Consultant is advised that any recommendation for contract award is not binding on City until the Agreement is fully executed and approved by City.
- c. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by amendment.

5. STATE PREVAILING WAGE RATES

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

6. INDEPENDENT CONTRATOR

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

7. OWNERSHIP OF MATERIALS

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

8. INSURANCE

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

1. Commercial General Liability (“CGL”) Insurance- Insurance Services Officer Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability Insurance- Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
 3. Sexual Abuse or Molestation (SAM) Liability: If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.
 4. Workers’ Compensation Insurance- as required by the State of California, with statutory limits and employer’s liability insurance with limits of no less than \$1,000,000 per accident for bodily injury and disease.
 5. Professional Liability Insurance (Errors and Omissions)- Consultant will maintain professional liability insurance appropriate to their profession with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
- A. If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage, shall be available to the City.
- B. The insurance policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:
- 1) Additional Insured Status- the City, its officers, officials, employees and volunteers shall be covered as additional insureds on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used.)
 - 2) Primary Coverage- for an claims related to this Agreement, the Consultant’s insurance coverage shall be primary insurance and primary coverage at least as

broad as ISO CG 20 01 04 13 with respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute to it.

- 3) Notice of Cancellation- Each insurance policy required above shall state that coverage shall not be cancelled except with notice to the City.
- 4) Waiver of Subrogation- Consultant hereby grants to City a waiver of any right to subrogation, which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver-of subrogation but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 5) Self-Insured Retentions- Self-insured retentions must be declared and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the names insured or the City.
- 6) Acceptability of Insurers- Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- 7) Claims Made Policies- If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the agreement of the beginning of the agreement work;
 - ii. Insurance must be maintained and evidence of insurance provided for at least five (5) years after completion of work under this agreement;
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of agreement work.
- 8) Verification of Coverage- Consultant shall furnish to City with original certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effective coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- 9) Subcontractors- Consultant shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein. Contractor shall ensure that City is an additional insured on insurance required from subcontractors.
- 10) Special Risks or Circumstances- City reserves the right to modify these requirements, including limits, based upon the nature of the risk, prior experience, insurer, coverage or other special circumstances.

9. INDEMNIFICATION

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

10. INTELLECTUAL PROPERTY INDEMNIFICATION

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

11. RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of this Agreement, pursuant to Government Code 8546.7, Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance

of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

12. 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 mutual agreement shall be reviewed by City's Executive Director of Finance.
- b. Not later than 30 days after issuance of the final audit report, Consultant may request a review by City's Executive Director of Finance 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.

13. CONFIDENTIALITY

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

14. CONFLICT OF INTEREST

- a. 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. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing City construction project that will follow.

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

15. REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

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 the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

16. NOTICE

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

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

Executive Director
Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, CA 92702
Fax 714-647-5635

To Consultant:

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail,

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

17. EXCLUSIVITY AND AMENDMENT

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

18. SUBCONTRACTING

- a. Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subcontract 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 the Consultant.
- b. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by City, except that which is expressly identified in the approved Cost Proposal.
- c. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by City.
- d. All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- e. Any substitution of subconsultant(s) must be approved in writing by City prior to the start of work by the subconsultant(s).

19. EQUIPMENT PURCHASE

- a. Prior authorization in writing by City shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- b. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by City, 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 condition: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit 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." 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

20. WAIVER

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

21. TERMINATION

City reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice. City may terminate this Agreement should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, City may proceed with the work in any manner deemed proper by City. If City terminates this Agreement with Consultant, City shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to City exceeds the funds remaining in the Agreement, in which case the overage

shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

22. NON-DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, relation, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities or in connection with any activities under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

23. JURISDICTION-VENUE

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

24. PROFESSIONAL LICENSES

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

25. STATEMENT OF COMPLIANCE

- a. Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- b. During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f)

et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- c. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 – Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- d. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s Regulations, including employment practices when the Agreement covers a program whose goal is employment.

26. DEBARMENT AND SUSPENSION CERTIFICATION

- a. Consultant’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.
- b. Exceptions to the Federal Government Excluded Parties List System maintained by

the General Services Administration are to be determined by the Federal highway Administration.

27. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney’s fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

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

ATTEST:

CITY OF SANTA ANA

 DAISY GOMEZ
 Clerk of the Council

 KRISTINE RIDGE
 City Manager

APPROVED AS TO FORM
 SONIA R. CARVALHO
 City Attorney

CONSULTANT

By: _____
 John M. Funk
 Assistant City Attorney

 Name:
 Title:

RECOMMENDED FOR APPROVAL

 NABIL SABA
 Executive Director
 Public Works Agency

Appendix
ATTACHMENT 3-1: NON-COLLUSION AFFIDAVIT
CERTIFICATIONS

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

To the CITY OF SANTA ANA DEPARTMENT OF PUBLIC WORKS

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

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

Signed _____

State of California
County of _____

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

Notary Public Signature

Notary Public Seal

Appendix
ATTACHMENT 3-2: NON-LOBBYING CERTIFICATION
CERTIFICATIONS

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

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

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

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

Firm _____

Signed and Printed Name: _____

Title _____

Date _____

Appendix
ATTACHMENT 3-3: NON-DISCRIMINATION CERTIFICATION
CERTIFICATIONS

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

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

EXHIBIT 1

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

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

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

Signed: _____

Title: _____

Firm: _____

Date: _____

**Appendix
ATTACHMENT 4
CALTRANS ATTACHMENTS**

Please see below.

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00

LABOR COSTS

- a) Subtotal Direct Labor Costs _____ \$ 0.00
- b) Anticipated Salary Increases (see page 2 for calculation) _____
- c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** _____ \$ 0.00

INDIRECT COSTS

- d) Fringe Benefits (Rate: 0.00%) _____ e) Total Fringe Benefits [(c) x (d)] _____ \$ 0.00
- f) Overhead (Rate: 0.00%) _____ g) Overhead [(c) x (f)] _____ \$ 0.00
- h) General and Administrative (Rate: 0.00%) _____ i) Gen & Admin [(c) x (h)] _____ \$ 0.00
- j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** _____ \$ 0.00

FIXED FEE

- k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee 0.00%]** _____ \$ 0.00

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

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00

l) **TOTAL OTHER DIRECT COSTS** _____ \$ 0.00

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

Subconsultant 1: _____

Subconsultant 2: _____

Subconsultant 3: _____

Subconsultant 4: _____

m) **TOTAL SUBCONSULTANTS' COSTS** _____ \$ 0.00

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** _____ \$ 0.00

TOTAL COST [(c) + (j) + (k) + (n)] _____ \$ 0.00

NOTES:

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

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3
COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

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

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	500		\$50.00	Year 1 Avg Hourly Rate

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

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

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

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

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

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

NOTES:

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

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

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

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

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

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

Note: Mark-ups are Not Allowed

Consultant _____ Prime Consultant Subconsultant 2nd Tier Subconsultant

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

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

Fee = _____ %

BILLING INFORMATION

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

(Add pages as necessary)

NOTES:

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

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

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

Consultant _____ Prime Consultant Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs	2	1	\$ 10.00	\$ 20.00
Equipment Rental and Supplies	2		\$ 20.00	\$ 40.00
Permit Fees	3		\$ 30.00	\$ 90.00
Plan Sheets				\$ 0.00
Test				\$ 0.00
Vehicle				\$ 0.00
Subconsultant 1:				\$ 100.00
Subconsultant 2:				\$ 200.00
Subconsultant 3:				\$ 300.00
Subconsultant 4:				\$ 500.00
Subconsultant 5:				

Note: Add additional pages if necessary.

NOTES:

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

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

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

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

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

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2

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

Note: Mark-ups are Not Allowed

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

Unit/Item of Work:

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

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

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

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs	2	1	\$ 10.00	\$ 20.00
Equipment Rental and Supplies	2		\$ 20.00	\$ 40.00
Permit Fees	3		\$ 30.00	\$ 90.00
Plan Sheets				\$ 0.00
Test				\$ 0.00
Subconsultant 1:				\$ 100.00
Subconsultant 2:				\$ 200.00
Subconsultant 3:				\$ 300.00
Subconsultant 4:				\$ 500.00
Subconsultant 5:				

Note: Attach additional pages if necessary.

TOTAL COST PER UNIT OF WORK _____

NOTES:

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

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

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

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

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

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____

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

Email: _____ Phone Number: _____

Address: _____

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

List services the consultant is providing under the proposed contract:

EXHIBIT 10-1 NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 0.00%**1. TERMS AS USED IN THIS DOCUMENT**

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

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

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

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

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

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#)
 - 1. Click on the link titled Disadvantaged Business Enterprise;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on [Access to the DBE Query Form](#) located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

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

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

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

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

Consultant's Full Legal Name: _____

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

Indirect Cost Rate:

Combined Rate _____ % **OR**

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

Facilities Capital Cost of Money _____% (if applicable)

Fiscal period * _____

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

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

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

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

Financial Management System:

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

Our financial management system has the following attributes:

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

accounts;

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

Cost Reimbursements on Contracts:

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

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

All A&E Contract Information:

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

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

Name**: _____ Title**: _____

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

Email**: _____ Phone Number**: _____

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

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

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

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

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

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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