



**REQUEST FOR QUALIFICATIONS  
FOR  
Professional Engineering Services for  
Federal and State Funded Projects**

**City of Marysville  
526 C Street  
Marysville, CA 95901**

**Date Released: August 3, 2020**

**Proposals are due prior to 2:00 p.m., September 17, 2020**

## Table of Contents

SECTION 1. INTRODUCTION.....	3
A. Purpose Of Request For Qualifications (RFQ).....	3
B. Tentative Timeline And Schedule Of Events.....	4
C. Disadvantaged Business Enterprise (DBE) Participation.....	4
D. Contract Period.....	4
E. Method of Payment .....	4
SECTION 2. SCOPE OF WORK/SERVICES .....	4
A. Sample Scope of Work/Services .....	5
B. Deliverables .....	6
C. Schedule.....	6
SECTION 3. STATEMENT OF QUALIFICATIONS .....	7
A. Submission Requirements.....	7
B. Submission Instructions.....	10
SECTION 4. QUALIFICATIONS EVALUATION PROCESS AND CRITERIA .....	11
A. Evaluation Process.....	11
B. Evaluation Criteria .....	11
SECTION 5. PROTEST PROCESS.....	12
SECTION 6. CONFIDENTIALITY OF RESPONSES.....	12
SECTION 7. CONTRACT DOCUMENTS.....	12
SECTION 8. MISCELLANEOUS INFORMATION.....	13
SECTION 9. QUESTIONS ON REQUEST FOR PROPOSAL.....	14
SECTION 10. ATTACHMENTS TO THIS RFQ.....	14
Attachment 1 – Exhibit 10-I - Notice to Proposers DBE Information .....	15
Attachment 2 – Sample Consultant Agreement.....	16

# PROCUREMENT FOR PROFESSIONAL SERVICES FOR FEDERALLY AND STATE FUNDED PROJECTS

## **SECTION 1. INTRODUCTION**

### **A. Purpose of Request for Qualifications(RFQ)**

The City of Marysville (hereinafter "Agency") is soliciting sealed Statements of Qualifications (SOQ) from qualified firms to provide Professional Engineering Services for activities associated with State and Federally funded projects, including, but not limited to Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA), and Community Development Block Grant (CDBG) projects.

The City of Marysville is awarded several construction and improvement projects every year that are state and federally funded. In order to comply with state and federal regulations and due to limited staffing and expertise, certain services are contracted out. The selected consultant will be responsible for providing the Agency professional services on an as-needed basis. The Consultant shall only perform work that is assigned in an authorized Task Order. This Contract does not guarantee that a Task Order shall be issued.

The Consultant may provide services to the City including, but not limited to CEQA/NEPA coordination or compliance documentation, program/project management, construction management/engineering, feasibility studies, preliminary engineering, design, engineering, surveying (right of way engineering), mapping, landscape architecture, or architectural related services, as well as incidental services connected to and for the purpose of development and implementation of Federal-aid and State funded projects. Successful firm will represent the City at all state or federal project audits.

The City projects may require coordination with Caltrans, FHWA, FEMA, CDBG and/or other state, local and federal agencies.

Any firm selected must demonstrate experience in providing professional services, and must be exceptionally capable of producing the desired services in a highly professional and cost-conscious manner.

For the purpose of this RFQ, the term "Consultant" and "Firm" and "Proposer" are interchangeable and refer to the qualified firm hired to provide the services.

For the purpose of this RFQ/Agreement, the following definitions shall apply:

OWNER is the City of Marysville.

PROPOSER is a firm which submits a Statement of Qualifications in response to this RFQ.

CONSULTANT is a firm hired by the City to provide the services described in this RFQ.

LOCAL REGULATORY AGENCY refers to all Sections, Divisions, and Departments of the City of Marysville and the County of Yuba that are charged with the review and approval of the project within the city limits.

STATE REGULATORY AGENCY refers to all State of California agencies that might have jurisdiction over the project design and/or construction.

FEDERAL REGULATORY AGENCY refers to all United States of America federal agencies that might have jurisdiction over the project design and/or construction.

**B. Tentative Timeline and Schedule of Events**

Release of this RFQ.....August 3, 2020  
SOQ Submission Deadline.....September 17, 2020  
Review and evaluation of SOQ.....September 25, 2020  
Interviews with finalist firms (tentative)/ Cost Negotiation.....October 07, 2020  
Recommended firm presented to Caltrans for approval.....October 23, 2020  
Recommended firm presented to City Council for approval.....TDB

**The City reserves the right to modify this timeline at any time.**

**C. Disadvantaged Business Enterprise (DBE) Participation**

The City of Marysville has established a **DBE Goal is 4%** for this Contract. Refer to **Attachment 1 – Exhibit 10-I - Notice to Proposers DBE Information.**

**D. Contract Period**

This Scope of Services will include ongoing engineering services to the City with Federal-aid, State and/or local funds for a period of three (3) years, with the option to renew up to two (2) additional one-year periods; the total term of the contract shall not exceed five (5) years.

**E. Method of Payment**

1. Consultant shall be paid based on Specific Rates of Compensation.
2. Specific projects will be assigned to Consultant through issuance of Task Orders.
3. After a project to be performed under this contract is identified by the City; The City will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate the City’s Project Coordinator. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the City and Consultant.
4. The total amount payable by the City for all Task Orders resulting from this contract shall not exceed \$2,300,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

**SECTION 2. SCOPE OF WORK/SERVICES**

This solicitation is not for specific projects, but for specific services. All work performed under this contract will require approval by the City’s Contractor Administrator and issued through a Task Order. A task order shall be requested from the Consultant to identify and refine the scope of services prior to issuing the task orders. The task order shall detail the tasks required for particular projects, schedule, and projected costs. The costs will be based on the specified rates of compensation in the contract. The Contract Administrator shall confer with the consultant to establish the maximum fee, including expenses, for the specific project and to establish the completion date.

## A. Sample Scope of Work/Services

Projects and services are unique, and the exact scope of work will vary between services and projects. However, typical professional services for projects might include but not be limited to the following general scope:

1. Environmental Compliance
  - a. Environmental Studies and Documentation – Complete the environmental review; including submitting the Caltrans Preliminary Environmental Study and preparing any required technical studies to complete the NEPA document. City staff will prepare the CEQA document. ***Contracting agency is not obligated to proceed with final design for any alternative, all reasonable alternatives will be evaluated and given appropriate consideration, and the firm may not proceed with final design until the relevant CEQA/NEPA decision documents have been issued (e.g., CE, FONSI, or ROD).***
2. Civil Engineering / Architectural / Field Survey / Soils & Materials Testing
  - a. Coordinate with City Manager, Public Works Director, and/or Street Superintendent for initial concept and direction.
  - b. Surveys and Mapping – The Consultant shall be responsible for data collection, mapping and surveying necessary for preliminary engineering, design, cost estimates, right-of-way impacts, and the level of environmental clearance. The scope of comprehensive base mapping and surveying includes but is not limited to Control Surveys, Aerial Photogrammetry, Limited Design Level Topographic Surveys, Right-of-Way Retracement, and a Record of Survey.
  - c. Preliminary Engineering Studies – Develop general project locations and design concepts and related activities needed to establish the parameters for final design such as Geometrics, Hydraulics, Geotechnical, Bridge, Landscape Architecture, Traffic Operations, Electrical, ITS Elements, etc.
  - d. Develop concept and design drawings for submission to regulatory or funding bodies for approvals including, but not limited to: FHWA, FEMA and CDBG and their corresponding California State agencies.
  - e. Prepare exhibits, renderings, drawings and prepare presentations to City Staff and/or City Council.
  - f. Utility Coordination – Submit improvement plans to utility companies in accordance with their requirements. Coordinate utility relocations, including relocation of the utility poles, as needed.
  - g. Provide any geotechnical evaluations, reports and recommendations for pavement design section, driveways, curb & gutter, slabs, cross gutters, etc.
  - h. Provide civil engineering and/or architectural design for complete roadway geometric design, demolition, asphalt and base improvements, drainage, grading, curb, gutter, sidewalks, cross gutters, ADA access ramps, street signage, street striping/markings, electrical improvements, landscaping, irrigation, waste water, sewer improvements, water improvements, site improvements, structure/bridge design, building design, airport runway/taxiway design, etc.
  - i. On behalf of the City, apply for and obtain all required approvals and permits from all governing public agencies for the construction of the project.
  - j. Coordination with Adjacent Properties – Coordinate with adjacent property to establish driveway locations and other modifications required in front of their property such as fence relocations, mailbox relocation, or tree removal.
  - k. Assist City in applying for and obtaining utility services and/or relocation of existing utilities necessary for project to be constructed and functional.
  - l. Prepare construction plans, specifications and bidding documents for construction. (utilizing the Caltrans Standards and AASHTO Geometric Design guidelines and/or /CDBG/FEMA standard specifications, current edition). The Construction Plans,

- Specifications and Bid Documents shall be adequate for obtaining construction bids in accordance with all applicable regulations and requirements of the pertinent Federal/State funding agency.
- m.* Prepare final detailed engineers / architects cost estimates
  - n.* Assist the City in all aspects of the bidding process with construction and engineering firms, including but not limited to respond to request for information, prepare addendums, attend pre-bid meeting, review bid results and qualify lowest responsible bidder, make recommendations for awarding the construction contract.
3. Construction Engineering/Management/Inspection/ Soils and Materials Testing:
- a.* Provide Construction Engineering/Management and/or inspection services.
  - b.* Review and approved contract's shop drawings, schedules, insurance, submittals and make recommendation for Notice to Proceed.
  - c.* Coordinate with utility companies for connections, service, relocations, etc.
  - d.* Perform construction staking as required.
  - e.* Perform contract administration, review contractor's payment requests and make recommendation for payment, conflict resolution, check certified payroll, releases, bonds, final pay requests certificate of completion, etc.
  - f.* Investigate proposed contract change orders and submit background information to the City for a decision, if justified, and prepare necessary drawings and documents for approval.
  - g.* Perform inspection services, daily reports, materials, subcontractors, equipment, manpower, weather, activities, etc.
  - h.* Perform materials and soils testing per City's Quality Assurance Program.
  - i.* Prepare and maintain as-built drawings and construction documentation for review by any auditing agency.
  - j.* Represent the City at all state or federal project audits.
4. Project assistance with Federal and State funded projects
- a.* Due to the fact that many of the City's current and future projects are funded by Federal and State grants, the selected consulting firm must have excellent knowledge of the requirements of Caltrans' Local Assistance Procedures Manual, FEMA and CBDG Program requirements.
  - b.* Project Management – The City's Public Works Director will serve as the contract manager and direct liaison between the Consultant and Caltrans District 3 Division of Local Assistance. The consultant shall be responsible for project management activities throughout the life of the contract and the scope of activities includes but is not limited to, coordinating and being responsible for scheduling meetings, managing the project schedule, preparing and distributing minutes, field reviews, tracking action items for the City and consultant sub-contractors, and preparing all submissions for the City to submit to Caltrans Local Assistance.
  - c.* Construction Phase Authorization – Consultant shall prepare Request for Authorization to advance project to Construction using procedures outlined in the Caltrans Local Assistance Procedures Manual.

## **B. Deliverables**

As agreed upon by the City and consultant in a Task Order for each project.

## **C. Schedule**

As agreed upon the City and consultant in a Task Order for each project.

## **SECTION 3. STATEMENT OF QUALIFICATIONS**

### **A. Submission Requirements**

These guidelines are provided for standardizing the preparation and submission of Statement of Qualifications (SOQ's) by all consultants. The intent of these guidelines is to assist consultants in preparation of their qualifications, to simplify the review process, and to help assure consistency in format and content.

SOQ's shall contain the following information in the order listed:

#### **1. Introductory Letter**

The introductory (or transmittal) letter shall be addressed to:

City of Marysville  
Craig Platt, Public Works Director  
526 C Street  
Marysville, CA 95901

The introductory (or transmittal) letter shall be on Consultant letterhead and include the Consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Consultant's understanding of the services being requested and any other pertinent information the Consultant believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall be wet-signed in blue ink by the individual authorized to bind the Consultant to the proposal.

#### **2. Organization and Approach**

The consultant's staff working on this project shall be qualified professional staff and shall have the necessary experience, expertise and licenses to complete the scope of work and satisfy all the requirements as described in this RFQ. SOQs shall include the following information:

1. Background of your firm.
2. Name of project manager who is a Registered Civil Engineer in the State of California.
3. An organization chart depicting the relationships between the prime consulting firm's team members and the sub-consultants. The organization chart shall include every person whose resume is submitted.
4. Describe your project and management approach. Provide a detailed description of how the team and scope of work will be managed.
5. Describe the roles of key individuals on the team. Provide resumes for all key team members. Resumes shall show relevant experience, for the Scope of Work, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of scope of work.

#### **3. Consultant Information, Qualifications & Experience**

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

1. Contracting agency
2. Contracting agency Project Manager
3. Contracting agency contact information
4. Contract amount

5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information
9. Project Objective
10. Project Description
11. Project Outcome

## **12. Scope of Work**

- a. Include a detailed Scope of Work Statement describing all services to be provided.
- b. Describe project deliverables for each phase of your work.
- c. Describe your cost control and budgeting methodology for this project.

## **13. Certificates of Insurance**

A statement of proposer's current insurance coverage signed by a company official. **Do not** submit a certificate of insurance in lieu of this statement. The City requires a minimum of One Million Dollars (\$1,000,000) Professional Liability Insurance, Automobile Liability Insurance, General Liability Insurance, and Workers' Compensation Insurance. If the current coverage does not meet the City's minimum requirements, a statement of proposer's ability and intent to obtain the required coverage must be included.

## **14. Conflict of Interest Statement**

Include a statement describing any potential or known conflict of interest regarding this proposal and/or the City of Marysville, or affirm that you do not have a conflict of interest.

Throughout the term of the awarded contract, any person, firm or subsidiary thereof who may provide, has provided or is currently providing Design Engineering Services and/or Construction Engineering Services under a contractual relationship with a construction contractor(s) on any local project listed in this Scope of Work must disclose the contractual relationship, the dates and the nature of the services. The prime consultant and its subconsultants shall also disclose any financial or business relationship with the construction contractor(s) who are working on the projects that are assigned for material Quality Assurance services through task orders on the contract.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any Design Engineering services including claim services, Lead Project Management services and Construction Engineering Services provided to all other clients on any local project listed in this Scope of Work.

In addition to the disclosures, the Consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The Consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the agency's projects' listed in this Scope of Work. The submitted documentation will be used for determining potential conflicts of interest.

If a Consultant discovers a conflict during the execution of an assigned task order, the Consultant must immediately notify the Contract Manager regarding the conflicts of interest. The Contract Manager may terminate the Task Order involving the conflict of interest and may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Contract Manager may be grounds for termination of the contract.

## **15. Litigation**

Indicate if the proposing Consultant was involved with any litigation in connection with prior projects.

If yes, briefly describe the nature of the litigation and the result.

## 16. Contract Agreement

Indicate if the proposing Consultant has any issues or needed changes to the proposed contract agreement included as **Attachment 2**.

The Consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

A contract will not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 31 and 2 CFR Part 200.

## 17. Federal-Aid Provisions

The proposing Consultant's services are federally funded, which necessitate compliance with additional requirements. Special attention is directed to **Attachment 1** – Local Assistance Procedures Manual Exhibit (LAPM) 10-I, Notice to Proposers DBE Information.

This solicitation is financed in whole or in part and therefore subject to Title 49, Code of Federal Regulations, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". To ensure equal participation for Disadvantaged Business Enterprise (DBE) groups specified in 49 CFR 26.5, a DBE participation is required. Only participation by certified DBEs will count toward the contract goal for this solicitation. In order to count toward a contract goal, a firm must be certified by the California Unified Certification Program (CUCP) and possess the work codes applicable to the type of work the firm will perform on the Agreement by the SOQ submittal due date. For a list of work codes, go to [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

It is the proposer's responsibility to verify that the DBE firm is certified as a DBE by the specified SOQ submittal due date and time. For a list of DBEs certified by the CUCP, go to: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

Reference "Statement of Qualifications Submittal Requirements" for detailed information and references to the required forms. Required forms will be made part of the agreement. Failure to meet the DBE goal or Good Faith Effort requirements and provide required DBE participation at due date and time of SOQ submittal may result in the SOQ submittal being rejected as non-responsive.

Federal and/or State prevailing wage rates may apply. This requirement, if applicable, will be specified in the draft Agreement. All contractors and subcontractors who bid or work on public works projects must register with the Department of Industrial Relations (DIR).

- Local Agency Proposer DBE Commitment (Consultant Contracts); (LAPM 10-O1).  
The City of Marysville has established a **DBE Goal is 4%** for this Contract. Refer to **Attachment 1** – Exhibit 10-I - Notice to Proposers DBE Information.
- DBE Information - Good Faith Effort (LAPM 15-H) – Required only if DBE goal is not achieved. It is recommended that proposer prepare and submit a GFE irrespective of meeting the DBE goal.
- Disclosure of Lobbying Activities (LAPM10-Q).

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

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

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

Exhibits can be found in the LAPM manual at <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

### **18. Cost Proposal**

The consultant performs the specific items of work for services stated in the contract. The method of payment is specific rates of compensation.

In order to assure that the City of Marysville is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the proposal shall include a cost proposal for each service of the proposal. Proposing Consultants will be required to submit certified payroll records, as required. **Cost proposal shall be submitted in a separate sealed envelope from the proposal.** The cost proposal is confidential and will remain sealed until all proposals have been reviewed, and the most qualified consultant has been selected. The top ranked consultant's cost proposal is opened just prior to negotiations. All other cost proposals are returned unopened after contract execution. Reference sample cost estimate in the LAPM Exhibit 10-H, Example #2. Consultant shall prepare a specific rate of compensation Fee estimate with progress payments at defined milestones/tasks.

Exhibit 10-K of the LAPM is called the Consultant Certification of Contract Cost and Financial Management System. Proposing Consultants and all Sub-consultants must submit Exhibit 10-K forms with the cost proposal (in the sealed envelope) for all contracts over \$150,000 in value.

Selected Consultant shall comply with Chapter 10.3 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process. A pre-award or post-award may be performed on any contract issued as a result of this RFQ. LAPM Exhibit 10-A, A&E Consultant Audit Request Letter and Checklist must be completed and approved by Caltrans Audits and Investigations (A&I) prior to contract execution.

### **B. Submission Instructions**

Proposers responding to this RFQ must include in their submittal package the following items:

- Four (4) copies of the firm's SOQ;
- Signed copy of PROPOSER's ACKNOWLEDGEMENT of the draft contract (refer to Section 7 of this RFQ and **Attachment 2**).

The above submittal items must be placed into a sealed envelope bearing proposer's name and the words:

RFQ – Professional Engineering Services for Federal and State Funded Projects  
City of Marysville

The submittal package must be delivered to:

City of Marysville  
526 C Street.  
Marysville, CA 95901  
Attn: Craig Platt, Public Works Director

The above submittals can be mailed or hand delivered but regardless of the postmark date, must be received by the City by 2:00 PM on September 17, 2020. Electronic transmissions either by fax or email will NOT be accepted.

The City assumes no responsibility for non-receipt of submittal packages due to any delay, including, but not limited to, carrier delay. It is the proposer's responsibility to meet the deadline stated above.

Submittals which do not contain the requisite number of copies and all the information requested in the RFQ may be considered non-responsive and rejected without evaluation.

Submittals received after the deadline or at the wrong location will be considered non-responsive. Fax and electronic copies will not be accepted.

#### **SECTION 4. QUALIFICATIONS EVALUATION PROCESS AND CRITERIA**

##### **A. Evaluation Process**

All submittals will be evaluated by the City of Marysville Selection Committee. The Committee may be composed of City's staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the City's Public Works Director only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of proposer.

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

The selection process may include oral interviews. The consultant will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted.

Upon completion of the evaluation and selection process, only the cost proposal from the most qualified consultant will be opened to begin cost negotiations. If agreement cannot be reached, then negotiation proceeds to the next most qualified consultant. All unopened cost proposals will be returned at the conclusion of the procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

##### **B. Evaluation Criteria**

The City will evaluate the submissions received based on criteria including the following:

No.	Criteria	Weight
1	Understanding of the work to be done	25
2	Design Engineering experience of state/federal funded projects	15
3	Construction Engineering/Management experience of state/federal funded projects	15

4	Qualifications of individual within the Consultant's organization directly responsible for the work	20
5	Familiarity with state and federal procedures/requirements	10
6	Demonstrated Technical Ability	10
7	Local presence	5

**SECTION 5. PROTEST PROCESS**

If a proposer desires to protest the selection decision, the proposer must submit by facsimile or email a written protest within five (5) business days after the delivery of the decision notice. The written protest should be submitted to the City’s Public Works Director as outlined below. Protests received after the deadline will not be accepted. Protests must be in writing, must include the name and address of the proposer and must state the specific reason(s) for the protest. A protest that merely addresses a single aspect of the selected proposal (for example, comparing the cost of the selected proposal in relation to the non--selected proposal) is not sufficient to support a protest. A successful protest will include sufficient evidence and analysis to support a conclusion that the selected proposal, taken as a whole, is an inferior proposal. Protest procedures and dispute resolution processes should be in accordance with 2 CFR 200.318(k).

The City’s Public Works Director will respond to a protest within ten (10) business days of receipt, and City representatives may, at its election, set up a meeting with the proposer to discuss the concerns raised by the protest. The decision of the City representatives will be final. The protest letter may be Emailed to:

Craig Platt  
Public Works Director  
[cplatt@marysville.ca.us](mailto:cplatt@marysville.ca.us)

**SECTION 6. CONFIDENTIALITY OF RESPONSES**

While the Agency cannot guarantee the confidentiality of information submitted by the agency, it will make reasonable efforts to protect the information to the extent possible, as permitted by law. If sensitive information, such as personal financial statements, is necessary for support of capacity of Proposer, contact the Agency for further direction.

**SECTION 7. CONTRACT DOCUMENTS**

A sample copy of the City's CONSULTANT CONTRACT is included with this RFQ as **Attachment 2**. Please review the agreement carefully. This is the contract the CONSULTANT will be expected to execute without alteration. If any changes are desired, the firm must submit a copy of the requested modifications to the City for approval at least ten (10) calendar days prior to the date that SOQs are due. If approved, the City will then issue the changes to all prospective PROPOSERS prior to the due date.

As part of its submittal package, an officer of the firm must sign and return a copy of the sample agreement. The signature indicates that the firm accepts the clauses of the contract, as stated in the enclosed sample copy of the City's agreement and any modifications thereto issued by the City during this solicitation of SOQs.

An "Acknowledgment Line" which reads as the following will be found below the signature line of the draft agreement. The officer must review the sample agreement carefully prior to signing the draft agreement.

"PROPOSER's ACKNOWLEDGEMENT: "I have received and reviewed the sample CONSULTANT CONTRACT. My signature below shall signify our firm's acceptance of said contract if our firm is selected for awarding a contract for the project as described in said RFQ.

The Consultant shall not be allowed to alter or negotiate contract language after the submittal of Consultant's Statement of Qualifications. Failure to execute the contract without alteration may result in the rejection of the Consultant's proposal and the retaining of a different consultant by the City.

At the time of contract execution, the Consultant will be required to provide evidence of insurance coverage (Certificates of Insurance) as specified in the agreement.

A contract will not be awarded to a consultant without an adequate financial management and accounting system as required by 24 CFR Part 85.20 "Standards for Financial Management Systems" and which is in conformance with OMB Circular A-87, "Cost Principles for State and Local Governments."

## **SECTION 8. MISCELLANEOUS INFORMATION**

- A. Issuance of this RFQ does not constitute a commitment by the Agency to award a contract.
- B. The Agency reserves the right to reject any or all proposals received in response to this RFQ, or to cancel this RFQ if it is in the best interest of the Agency to do so.
- C. The Agency may select one or more Professional firms to carry out the work described in this RFQ.
- D. The firms submitting a proposal agrees that by submitting a proposal it authorizes the Agency to verify any or all information and/or references given in the proposal.
- E. The Agency reserves the right to approve all subcontractors proposed by the primary contractor.
- F. The prospective Consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the City of Marysville.
- G. The Agency reserves the right, after contract award, to amend the resulting contract as needed throughout the term of the contract to best meet the needs of all parties.
- H. No appeals will be heard for late proposals or proposals.
- I. Proposers will be required to provide proof of professional liability insurance and an errors and omissions policy to meet Agency.
- J. All information, materials, and documents discovered or developed/produced for this project by Proposer will become the property of the Agency.
- K. Proposer must be licensed to practice engineering in the State of California, and must not be listed on Federal debarment lists.

- L. Proposers will be responsible for adherence to the Agency's Economic Opportunities Plan and Davis Bacon Act wage rates if applicable.
- M. The City is dedicated to the principles of equal employment opportunity in any term, condition or privilege of employment or contracting. We do not discriminate on the basis of age, race, sex, color, religion, national origin, disability, veteran status, sexual orientation, gender identity, or any other status protected by state or local law. This policy applies to all employees and non-employees such as customers, clients, vendors, contractors, subcontractors and consultants.

### **SECTION 9. QUESTIONS ON REQUEST FOR PROPOSAL**

Any questions or requests for clarification about this RFQ must be submitted in writing to Craig Platt – Public Works Director, [cplatt@marysville.ca.us](mailto:cplatt@marysville.ca.us). For the benefit of all proposers, no questions can be accepted after 5:00 p.m. on September 2, 2020. A summary of any questions received and their responses will be sent to all agencies who have received an RFQ.

### **SECTION 10. ATTACHMENTS TO THIS RFQ**

The following documents are attachments to this RFQ:

- Attachment 1, Exhibit 10-I - Notice to Proposers DBE Information
- Attachment 2, Sample Consultant Contract

**Attachment 1 – Exhibit 10-I - Notice to Proposers DBE Information**

**EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION**

The Agency has established a DBE goal for this Contract of 4 %

OR

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

**1. TERMS AS USED IN THIS DOCUMENT**

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

**2. AUTHORITY AND RESPONSIBILITY**

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

**3. SUBMISSION OF DBE INFORMATION**

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

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

**4. DBE PARTICIPATION GENERAL INFORMATION**

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
  - 1. Click on the link titled *Disadvantaged Business Enterprise*;
  - 2. Click on Search for a DBE Firm link;
  - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

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

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the

purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## **Attachment 2 – Sample Consultant Agreement**

**ATTACHMENT 2 – SAMPLE CONSULTANT CONTRACT  
FEDERAL / STATE FUNDED PROJECTS  
CITY OF MARYSVILLE**

**ARTICLE I INTRODUCTION**

- A. This contract is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the “CONSULTANT” is as follows: \_\_\_\_\_

Incorporated in the State of *(NAME OF STATE)*

The Project Manager for the “CONSULTANT” will be *(NAME)*

The name of the “LOCAL AGENCY” is as follows: \_\_\_\_\_

The Contract Administrator for LOCAL AGENCY will be *(NAME)*

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

**ARTICLE II STATEMENT OF WORK**

- A. Consultant Services

CONSULTANT shall provide professional engineering services to the CITY. This includes, but is not limited to: CEQA/NEPA coordination or compliance documentation, program/project management, construction management/engineering, feasibility studies, preliminary engineering, design, engineering, surveying (right of way engineering), mapping, landscape architecture, or architectural related services, as well as incidental services connected to and for the purpose of development and implementation of Federal-aid and State funded projects. Successful firm will represent the City at all

state or federal project audits. The City projects will require coordination with Caltrans, FHWA, FEMA, CDBG and/or other state, local and federal agencies. Project design shall meet all City Requirements and conform to the City and Caltrans/CDBG/FEMA standard specifications, current edition. CITY will pay for direct project advertisement costs.

CONSULTANT shall refer to City's RFQ for a more detail Statement of Work.

**B. Right of Way**

CONSULTANT shall conduct a right of way survey for the project site and adjacent properties to obtain all right-of-way information necessary for the complete design of the project. CONSULTANT shall prepare right-of-way certification.

**C. Surveys**

CONSULTANT has the responsibility for performing preliminary or construction surveys.

**D. Subsurface Investigations**

CONSULTANT has responsibility for making subsurface investigations. Soils testing and any other specialized services will be performed CONSULTANT and/or their Sub-Consultant.

**E. Local Agency Obligations**

All data applicable to the project and in possession of LOCAL AGENCY or another agency, or government that are to be made available to CONSULTANT are referred to in the contract.

**F. Conferences, Visits to Site, Inspection of Work**

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

**G. Checking Shop Drawings**

Payment for checking shop drawings by CONSULTANT are included in the contract fee.

**H. Consultant Services During Construction**

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

**I. Documentation and Schedules**

The CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA/CDBG/FEMA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

**J. Deliverables and Number of Copies**

One copy of documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots shall be provided to the CITY. If requested, additional copies will be provided at reproduction cost.

**ARTICLE III CONSULTANT'S REPORTS OR MEETINGS**

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

## **ARTICLE IV PERFORMANCE PERIOD**

- A. This contract shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end on (DATE), unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.

## **ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this contract is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT'S Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45

calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)

(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed \$ (2,300,000.00). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

#### **ARTICLE VI TERMINATION**

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

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

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

#### **ARTICLE VIII RETENTION OF RECORDS/AUDIT**

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

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

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

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

#### **ARTICLE X SUBCONTRACTING**

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

- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

#### **ARTICLE XI EQUIPMENT PURCHASE**

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

#### **ARTICLE XII STATE PREVAILING WAGE RATES**

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

#### **ARTICLE XIII CONFLICT OF INTEREST**

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

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

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### **ARTICLE XVI STATEMENT OF COMPLIANCE**

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

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

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

#### **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

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

#### **ARTICLE XVIII FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

#### **ARTICLE XIX CHANGE IN TERMS**

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

#### **ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 4%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

#### **ARTICLE XXI CONTINGENT FEE**

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

#### **ARTICLE XXII DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

#### **ARTICLE XXIII INSPECTION OF WORK**

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

#### **ARTICLE XXIV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL

AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

## **ARTICLE XXV INSURANCE**

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to LOCAL AGENCY.
  - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
  - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

## **ARTICLE XXVI OWNERSHIP OF DATA**

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

projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.

- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA/CDBG/FEMA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

**ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

**ARTICLE XXXI RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

**ARTICLE XXXII NOTIFICATION**

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

CONSULTANT:

\_\_\_\_\_ (CONSULTANT)

\_\_\_\_\_ (NAME) \_\_\_\_\_, Project Manager

\_\_\_\_\_ (ADDRESS)

\_\_\_\_\_

LOCAL AGENCY:

\_\_\_\_\_ (LOCAL AGENCY)

\_\_\_\_\_ (NAME) \_\_\_\_\_, Contract Administrator

\_\_\_\_\_ (ADDRESS)

\_\_\_\_\_

**ARTICLE XXXIII CONTRACT**

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

**ARTICLE XXXIV SIGNATURES**

(Name of CONSULTANT)

(Name of LOCAL AGENCY)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_(Name of Signer)

\_\_\_\_\_  
(Signature)  
(Name of Signer)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_(NAME & TITLE)

Attachments: Attachment I – Cost Proposal

"PROPOSER's ACKNOWLEDGEMENT: "I have received and reviewed the sample CONSULTANT CONTRACT. My signature below shall signify our firm's acceptance of said contract if our firm is selected for awarding a contract for the project as described in said RFQ.

Acknowledgment Line: \_\_\_\_\_