



City Council Staff Report

DATE: December 17, 2014 CONSENT CALENDAR

SUBJECT: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT TO TRANSTECH ENGINEERS, INC., A CALIFORNIA CORPORATION, IN THE AMOUNT OF \$484,102 FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE BOGERT TRAIL BRIDGE REHABILITATION, CITY PROJECT NO. 07-03, FEDERAL AID PROJECT NO. BHLS 5282 (026)

FROM: David H. Ready, City Manager

BY: Public Works & Engineering Department

SUMMARY

This action will approve a professional services agreement with Transtech Engineers, Inc., a California corporation, for construction management services for the Bogert Trail Bridge Rehabilitation, City Project No. 07-03, Federal Aid Project No. BHLS 5282 (026).

RECOMMENDATION:

- 1) Approve Agreement No. _____ with Transtech Engineers, Inc., a California corporation, in the amount of \$484,102 for construction management services related to the Bogert Trail Bridge Rehabilitation Project, City Project No. 07-03, Federal Aid Project No. BHLS 5282 (026); and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Public Works and Engineering Department previously applied for funding through the Highway Bridge Program (HBP) for widening and rehabilitation of the existing Bogert Trail bridge over the Palm Canyon Wash. The existing bridge has been identified by Caltrans as functionally obsolete, and its widening and

repairs are eligible for funding through the HBP. This project will retrofit and repair the existing bridge, and widen the bridge deck width to match the existing roadway width on either side of the bridge, including new sidewalks and accommodating bike lanes.

On November 5, 2014, the City Council approved the plans, specifications, and working details for the Bogert Trail Bridge Rehabilitation, City Project No. 07-03, Federal Project No. BHLS-5282 (026), (the "Project"), and authorized the bid process. The project has been advertised for bidding, with a bid opening date of December 16, 2014; City Council award of a construction contract will be scheduled in January 2015.

The scope of the Project is of a magnitude that requires the services of a professional construction management firm. Construction of the Project was originally anticipated in 2012, however, construction of the Project causes potential environmental impacts to the critical habitat for Casey's June beetle, a federal endangered species. In order to mitigate for these potential environmental impacts, the City was required to dedicate a permanent easement, the Bogert Wash Preserve, adjacent to the Project, to the Center for Natural Lands Management (CNLM). On July 3, 2013, the City Council approved a funding agreement and granted a conservation easement for Casey's June beetle habitat mitigation to CNLM for the Project, allowing staff to proceed with the construction phase.

Staff prepared a Request for Proposals (RFP) for construction management services, including all related construction engineering, inspection, materials testing, and contract compliance. With the expectation that construction of the Project was to occur in 2012, staff released the RFP in October 2011, which was published and made available to firms through the City's Division of Procurement and Contracting. On November 2, 2011, the Division of Procurement and Contracting received proposals from the following 5 firms:

1. Athalye Consulting Engineering Services, Inc.; Lake Forest, CA
2. Atkins Global; San Diego, CA
3. Falcon Engineering Services, Inc.; Corona, CA
4. Harris & Associates; Irvine, CA
5. Transtech Engineers, Inc.; Walnut, CA

Following review of the proposals and interviews by staff, Transtech Engineers, Inc., was selected on the basis of the firm's professional experience, qualified staff, and excellent references.

The Public Works and Engineering Department has prepared a professional services agreement with Transtech Engineers, Inc., in the amount of \$484,102 to provide the City with the required construction management services, including

all related construction engineering, inspection, materials testing, and contract compliance. A copy of the proposed professional services agreement is included as **Attachment 1**.

FISCAL IMPACT:

A total of \$5,224,193 was previously budgeted for the Project from the following fund sources:

- Local Measure A (Fund 134): \$896,016
- Caltrans – HBP Grant, Capital Projects (Fund 261): \$4,328,177

All costs associated with the Project are reimbursed up to 88.53% by the federal Highway Bridge Program (HBP) grant from the Federal Highway Administration via Caltrans. Funds to encumber for approval of the Professional Services Agreement in the amount of \$484,102 with Transtech Engineering, Inc., are budgeted and available from the following accounts:

- Local Measure A, Account No. 134-4498-50244; \$55,527
- Federal HBP Grant, Account No. 261-4491-50244; \$428,575

No local general funds are being used for the Project.

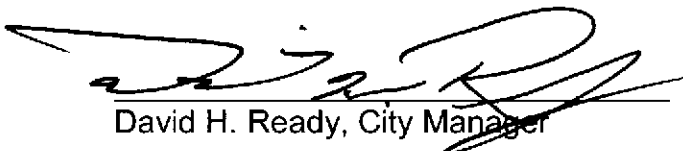
SUBMITTED:

Prepared by:



Marcus L. Fuller
Assistant City Manager/City Engineer

Approved by:



David H. Ready, City Manager

Attachments:

1. Professional Services Agreement

ATTACHMENT 1

**CITY OF PALM SPRINGS
PROFESSIONAL SERVICES AGREEMENT
CONSTRUCTION MANAGEMENT SERVICES FOR
BOGERT TRAIL BRIDGE REHABILITATION
CITY PROJECT NO. 07-03
FEDERAL AID PROJECT NO. BHLS 5282 (026)**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this _____ day of _____, 20__, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter referred to as "City") and TRANSTECH ENGINEERS, INC., a California Corporation (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

- A. City has determined that there is a need for construction management services for the Bogert Trail Bridge Rehabilitation, City Project No. 07-03, Federal Aid Project No. BHLS 5282 (026), (hereinafter the "Project").
- B. Consultant has submitted to City a proposal to provide construction management services to City for the Project pursuant to the terms of this Agreement.
- C. Consultant is qualified by virtue of its experience, training, education, reputation, and expertise to provide these services and has agreed to provide such services as provided herein.
- D. City desires to retain Consultant to provide such professional services.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant agrees to perform the professional services set forth in the Scope of Services described in Exhibit "A," which is attached hereto and is incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and that Consultant is experienced in performing the Work and Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement and the supplemental "Special Requirements" identified on Exhibit "B"; (2) the Scope of Services; (3) the City's Request for Proposals; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), which shall all be referred to collectively hereinafter as the "Contract Documents." The City's Request for Proposals and the Consultant's Proposal, respectively, are hereby incorporated by reference and are made a part of this Agreement. The Scope of Services shall include the Consultant's Proposal. All provisions of the Scope of Services, the City's Request for Proposals, and the Consultant's Proposal shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the provisions of the Scope of Services (Exhibit "A"); (2nd) the provisions of the City's Request for Proposals; (3rd) the terms of this Agreement and the supplemental "Special Requirements" identified on Exhibit "B"; and, (4th) the provisions of the Consultant's Proposal.

1.3 Compliance with Law. Consultant warrants that all Services rendered hereunder shall be performed in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.4 Licenses, Permits, Fees and Assessments. Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Services should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials,

papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Amount or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days, may be approved by the City Manager, or his designee, as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the Palm Springs City Council. It is expressly understood by Consultant that the provisions of this section shall not apply to the services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions in Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Maximum Contract Amount. For the Services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the Schedule of Compensation, which is attached hereto as Exhibit "C" and is incorporated herein by reference, but not exceeding the maximum contract amount of Four Hundred and Eighty Four Thousand, One Hundred and Two Dollars, (\$484,102) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit "C." Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation. The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges

that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Services. The maximum amount of City's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Agreement are completed, consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation (Exhibit "C"), in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Palm Springs City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance (Exhibit "D").

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit "D" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in

writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of the Services but not exceeding three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D") and pursuant to Section 3.2 above, unless extended by mutual written agreement of the Parties.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: David Mlynarski. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required under this Agreement without the prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for professional

fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5. INSURANCE

5.1 Types of Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, or employees. In the event the City Manager determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his designee. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. **Errors and Omissions Insurance.** Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than one million dollars (\$1,000,000.00) per occurrence and two-million dollars (\$2,000,000.00) annual aggregate, in accordance with the provisions of this section.

(1) Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any professional liability claims made against Consultant and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the professional liability insurer an endorsement providing that the required limits of the policy shall apply separately to claims arising from errors and omissions in the rendition of services pursuant to this Agreement.

(2) If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City

Manager.

(3) In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Services under the terms of this Agreement.

B. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

C. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

D. Business Automobile Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of one million dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

E. Employer Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least one million dollars (\$1,000,000.00) for bodily injury or disease.

5.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this Agreement. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims and claims history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

5.3 Other Insurance Requirements. The following provisions shall apply to the

insurance policies required of Consultant pursuant to this Agreement:

- 5.3.1 For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 5.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 5.3.3 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 5.3.4 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.
- 5.3.5 Consultant agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 5.3.6 Consultant agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 5.3.7 Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it

waive any rights hereunder in this or any other regard.

- 5.3.8 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 5.3.9 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 5.3.10 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 5.3.11 Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the Work performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 5.3.12 Consultant agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages resulting from the Consultant's activities or the activities of any person or person for which the Consultant is otherwise responsible.

5.4 Sufficiency of Insurers. Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless such requirements are waived in writing by the City Manager or his designee due to unique circumstances.

5.5 Verification of Coverage. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and

Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No.____" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies. All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, Council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness, or willful misconduct of the City, its officers, Council

members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness, or willful misconduct of Consultant to any extent, then City shall reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such County, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be

employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Default of Consultant.

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Manager, or his designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

8.5 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement

of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.6 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.7 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated

during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City: City of Palm Springs
Attention: City Manager & City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262
Telephone: (760) 323-8204
Facsimile: (760) 323-8332

To Consultant: Transtech Engineers, Inc.
Attention: David Mlynarski
413 MacKay Drive
San Bernardino, CA 92408
Attention: David Mlynarski
Telephone: (909) 384-7464
Facsimile: (909) 384-7475

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.6 Third Party Beneficiary. Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.8. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is

signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

ATTEST:
CITY OF PALM SPRINGS, CA

CONTENTS APPROVED:

By _____
City Clerk

By _____
City Manager

Date: _____

Date: _____

By _____
City Engineer

Date: _____

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL:

By _____
City Attorney

Date: _____ Agreement No. _____

Date: _____

CONSULTANT

Name: _____

Check one: Individual Partnership Corporation

Corporations require two notarized signatures: One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

Address: _____

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____



On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

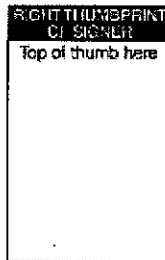
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

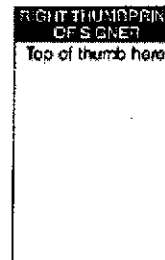
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT "A"

SCOPE OF SERVICES

1. Pre-Construction Meeting

Facilitate a pre-construction meeting. The meeting will be attended by representatives of the local agency and contractor. Affected agencies will be invited to attend: local authorities (police, fire, etc.), and public utilities personnel. City will also extend an invitation to Caltrans. If necessary, Consultant will have additional meetings where considerable effort and time is required to cover specific areas, such as labor compliance, Equal Employment Opportunity (EEO), record keeping, etc. Consultant will explain the various forms, reports, as well as sanctions for noncompliance with local, State, and federal requirements. Discussion will include requirements for Equal Employment Opportunity, State and federal safety, labor compliance and DBE. Potential utility and traffic safety problems will also be discussed, as well as National Environmental Policy Act (NEPA) compliance requirements. A written record of attendance and items discussed will be prepared and distributed to all attendees.

2. Project Administration

- a. Administer Project construction contracts using Caltrans Construction Manual, and in compliance with Caltrans Local Assistance Procedures Manual (LAPM), Chapter 16- Administer Construction Contracts and Chapter 17- Project Completion for Federally Funded Projects.
- b. Contract Time Monitoring. Consultant will review working days, contract time requirements, and document time extensions according to the requirements set forth in the bid specifications. Any contract time extension approvals will only be made if the justification demonstrates a delay to the controlling item of work in the contractor's schedule. Consultant will maintain a written record of project progress. This record will indicate factors which may affect the work, such as weather conditions, utility delays, strikes or labor disputes, and material shortages. Based on these factors a record of working days will be maintained.
- c. Engineer's Daily Reports. Consultant will keep daily reports to record work in progress. When the report is used to determine compliance with the labor provisions of the contract,
- d. Conduct regular Project coordination meetings with Contractor, Agency, Design Engineer, local cities, and/or regulatory agencies as appropriate.
- d. Prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by Agency for approval.
- e. Provide reports as needed to comply with specific funding requirements.
- f. Establish and maintain Project records in accordance with the Caltrans Construction Manual and the Local Assistance Procedure Manual. Project record keeping shall include, but are not limited to, correspondence, memoranda, contract documents, change orders, claims, Agency and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment. Maintain a record of the names, addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.
- g. Establish and maintain a filing system for the Project using the Caltrans Construction Manual as a guideline.
- h. Monitor Contractors' construction schedules on an ongoing basis and alert Agency to conditions that may lead to delays in completion of the Project.
- i. Prepare and submit a monthly Activity Summary Report for the Project. The activity report shall include status of SWPPP issues, RFIs, contract change orders, and notice of potential claims; construction activities completed, ongoing, and upcoming; status of Project budget and schedule, and other highlights and critical issues
- j. Review compliance with environmental requirements.
- k. Participate in partnering sessions with the Contractor, Agency, and Local Agencies, as required.
- l. Administer that the Project meets provisions of the Quality Assurance Program Manual.
- m. Review Contractors' certified payroll records and compliance with the requirements of the

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

construction contract.

- n. Administer that the Project meets provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- o. Administer that the Project meets applicable regulations of the Air Quality Management District (AQMD).
- p. Administer that the contractor maintains redlined as-built plans on an ongoing basis throughout the duration of the Project.

3. Construction Coordination

- a. Provide on-site construction staff as necessary, including Construction Resident Engineer, Structures Representative/Inspector, PW Inspector, Office Engineer and Materials Testing and Specialty Inspection to effectively manage the Project.
- b. Act as a prime point of contact between Agency, Contractor, Regulatory Agencies, Utility Companies and other involved parties. Act as point of contact between design engineers, cities, and the public. Facilitate coordination with property owners adjacent to Project right-of-way.
- c. Maintain regular contact with and respond to Agency Program Manager.
- d. Assist the contractor in coordination of utility relocations with utility companies and their designees.
- e. Coordinate review of shop drawings and Requests for Information (RFI) with the Construction Manager. Log and track submittals and requests.
- f. Coordinate Storm Water Pollution Prevention Plans (SWPPP), review and approve contractor prepared SWPPP. Cooperate with monitoring agency inspections and field reviews and administer Contractor compliance with SWPPP permits requirements and other Federal, State and Local requirements and laws.
- g. Maintain permits and permit documentation on site.
- h. Administer Contractor's compliance with permits, Federal or State law, regulations, or requirements.
- i. Public Relation Service (by others to be retained by the City)

4. Construction Inspection

- a. Coordinate required inspections necessary for the Project. Administer that appropriate local City and regulatory agencies are notified and present as required throughout the Project. Notify Agency regarding any directives, recommendations, notices, etc. received. Administer that assigned personnel also has knowledge of OSHA and State of California Construction Safety Orders (CalOSHA) and traffic control practices. In addition, assigned personnel will be familiar with the construction requirements of Caltrans' Storm Water Pollution Prevention Program. Assignments to be performed will include:
 - Necessary inspections as required to determine that construction of the Project is being performed in accordance with the contract documents.
 - Providing necessary Materials Testing and Specialty Inspections to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to ensure that structure and roadway construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship. All field and laboratory testing will be performed in accordance with California Test Methods.
 - Identifying actual and potential problems associated with the Project and recommending solutions.
 - Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

- Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities.
 - Administering that field red lined as built plans are maintained daily by the contractor.
 - Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
 - Monitoring Contractors' compliance with applicable regulations required by AQMD.
- b. Perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents.
- c. Exercise reasonable care and diligence to discover and promptly report to Agency any and all defects or deficiencies in the materials or workmanship used in the Project.

5. **Materials Testing and Inspection (by sub-consultant, MTGL, Inc.)**

Materials Testing and Inspection services will be provided by MTGL, Inc. (Subconsultant, DBE Firm). The scope of work for Materials Testing and Inspection will include:

MTGL will provide special inspection and testing services in accordance with the Project specifications and specific standards as required by the Agency for necessary construction activities including:

- Soils and Foundation
- Fill compaction
- Reinforcing Steel
- Concrete
- Structural Steel
- Masonry
- Grout and Mortar
- Epoxy & Expansion Anchors
- Footing Excavation
- Pile/Pier Installation
- Reinforcement Placement
- Concrete Placement
- Field Welding
- High Strength Bolting
- Masonry Placement & Grouting
- Utility Trench – Backfill Compaction
- Pavement/Base – Off-site and On-site Testing

Field Reporting: A daily hand written report will be issued at the completion of the day with verified service hours signed by the Project Superintendent. The Construction Manager, Architect, Structural Engineer, and General Contractor's project manager will be mailed the reports within 7 working days of MTGL service after review from Field Engineer.

Test and Report Delivery Timeline: MTGL strives to provide test results in a timely manner. Final reports for typical tests are provided within seven (7) calendar days. If requested, preliminary verbal results can be provided within one business day. In the event that a sample yields abnormal results or fails a test, MTGL will provide verbal notification within 2 hours, with the final written report delivered within 24 to 48 hours. After a failed test, MTGL will fast-track reporting of subsequent re-tests and provide a final report within 3 to 4 business days, or sooner per client request.

Compaction Testing of On-Site Improvements & Trench Backfill: Services will consist of compaction testing of the utility trench backfills and paved areas on site and within the street right of way. Work will be scheduled by the Consultant's inspector by calling MTGL dispatcher at (800) 491-2990. Requests received by 3:00 PM the prior business day will be serviced the following day. MTGL's services will consist of performing in place density tests by either the sand cone method (ASTM D1556) or nuclear gauge method (ASTM D2922), water content test, and maximum density optimum moisture test per ASTM D1557 at locations selected by MTGL representative. Trench backfill compaction test will be taken at locations and frequencies in accordance to guidelines provided by applicable requirements. The following guidelines will be used, subject to Agency approval.

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

- Test locations will be selected by MTGL technician at locations on a random basis.
- Test locations on main trenches will be spaced no more than 300 linear feet and lateral trenches will be tested.
- Compaction tests will be taken at each lift in the backfill zone and in the sub-grade zone in trenches with depths of 4 feet or less.
- One half of the test shall be taken from each depth. Trenches deeper than 4 feet will be tested each 8 inch lift and at the sub grade zone.
- In addition, sub-grade compaction testing of paved areas on-site and within the street right of way will be taken at locations and frequencies in accordance to guidelines provided. The following guidelines will be used, subject to approval.
- Test locations will be selected by MTGL technician at locations that represent the surface appearance of the sub-grade at the time of testing.
- Test locations will be spaced no more than 500 linear feet apart.

Grading Observation & Testing: Services will consist of rough grading operations, performing soils tests, and submittal of a soil grading report. MTGL technician will observe rough grading operations on a full time basis. Removal bottoms and footing excavations shall be approved by the identified project professional (i.e. GE or CEG). Water content, in place density (compaction), maximum density and optimum moisture, expansion index and soluble sulfate test will be performed at a frequency and at locations selected by the soils engineer. MTGL laboratory can perform other soils test, if required, subject to approval. During the course of construction MTGL will provide written notification, with a copy to the contractor, if in MTGL's opinion, any time the work is not in conformity to the plans and specifications. Upon completion of the work MTGL will prepare a final report which will summarize observations and the results of all tests performed. The final report will contain recommendations and opinions regarding the conformance of the completed rough grading to the intent of the plans, soil engineering reports, and specifications.

Asphaltic Concrete Lay Down Inspection: Services will consist of inspection of the asphaltic concrete lay down and quality control during the lay down operation for conformance to the job specifications. The lay down inspection will consist of monitoring the temperature and rolling procedure for the in place density of asphaltic concrete by nuclear method. Quality control will consist of asphaltic concrete maximum density testing for conformance to the job specifications. A written report will be provided at the completion of the work. MTGL services will also include laboratory testing of the aggregate base and asphaltic concrete. Services will include Hveem stabilometer, sieve analysis, sand equivalents and R-Value testing of aggregate base. Tests will be performed on materials sampled at random locations and at frequencies based on the project specifications. Testing requirements for Oil Content of asphalt can be met with MTGL Rapid Ignition Oven, providing real time results to batch plants supplying asphalt.

Concrete Inspection & Testing: Services will consist of continual concrete inspection during the concrete placement, for conformance to approved plans, specifications, and building codes. During concrete placement MTGL inspector will fabricate 4 compression test specimens for each 100 cubic yards of concrete placed. MTGL will provide testing at different intervals per project requirements. Test cylinders will be cured in MTGL laboratory until they are tested in accordance to ASTM C192. Compression test will be performed in accordance to ASTM C39 at 7 and 28 days, respectively. Copies of the results of all compression tests will be provided upon completion of the test. Prior to any placement of concrete, MTGL inspector will verify all reinforcing steel placed in accordance with the project documentation. Verification of proper size, location and spacing will be the primary focus of these inspections.

Structural Steel Inspection & Testing: MTGL will provide an inspector that has been certified by ICC as a

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

special inspector for welding. Their work will consist of inspections of all welds made in the shop operations and/or during the field erection for compliance of the approved plans and job specifications. The inspector will make a systemic record of all welds, including a list of defective welds and a manner of correction. The inspector will check the material, equipment, details of construction and procedures, as well as the welds. The inspector may use gamma ray, sonic or any other aid for visual inspection that they deem necessary to assure the adequacy of the welding. During the welding inspection, MTGL inspector will also inspect the installation of the high strength bolts for conformance to the job specifications. MTGL inspector will check the materials, equipment, details of construction and installation procedure.

Ensuring Contract Requirements: MTGL role during construction will incorporate daily review of the technicians and inspection activities to define areas that may need to be re-tested. In some cases an RFI is issued to the architect for approval. MTGL corporate policy is to work with the associated sub-contractor to rectify the failing areas rapidly as to not interfere with the critical path of construction. In the event the item is not cleared up by means of a re-test or an RFI response within the first 72 hours, a deficiency log will be created and circulated with each week's reports until resolved. MTGL communications at this point will be with the assigned Inspector who will aide in the required corrective actions with the general contractor. MTGL will collect verified reports at the completion of each stage of construction while the work at hand is within a short time of the inspector's assigned duties. The project will ultimately end with an affidavit that all materials and soil has met the approved project documents for certification.

Deficiency Log: MTGL will work with involved parties to ensure that all construction and materials conform to the project plans and specifications. Any deficiency found will be immediately brought to the Client's Construction Manager, the Contractor and if applicable, the sub-contractor involved. If the deficiency is not resolved within 72 hours, we will distribute a deficiency log to all parties involved on a weekly basis. MTGL will proactively work with the party responsible for the deficiency to ensure that it is resolved.

Reporting: Daily inspection reports will be provided to the Construction Manager with weekly summary reports provided. A verified report indicating that all inspected welding has been done in accordance to the approved plans and specifications will be provided upon completion of the work. MTGL will monitor re-testing of any failed tests to assist the client in regaining costs for inspection of failing tests from the General Contractor and its Subcontractors.

6. Managing Contract Cost Accounting System, including Construction Records and Accounting Procedures

- Manage contract cost accounting system.

7. Maintaining Project Files and Documentation

The project file will contain all data pertinent to the work and to the requirements of the specifications. In general, project files will support adequacy of field control, conformance to contract specifications and contract payments to the contractor. Project files will be organized to include the information indicated below:

- Project Personnel
- Weekly record of working days
- Materials Data
- Engineer's Daily Reports
- Contract Item Pay Quantity Documents

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

- Contract Change Orders
- Extra Work Reports
- Progress Pay Estimates /Status of Funds
- Labor Compliance and EEO records
- Contractor's Payrolls
- Final Report
- Materials Certificate
- DBE Records

The file will be complete, available at a single location, organized and maintained in a manner that permits inspection by Caltrans and FHWA personnel during process reviews or random checks. Maintaining complete and accurate files is a very important aspect of managing federally funded projects. Generally, whenever the local agency is unable to produce requested data or information, it is assumed by reviewing personnel the required actions were either never performed or not properly recorded. Organized project files can minimize these negative assumptions. District Local Assistance Engineer (DLAE) may perform process reviews and inspect, during construction, local agency project files for compliance with federal and State requirements. Organization and content of the project file is one indicator of the effective and efficient management of the project by the resident engineer.

8. Labor Compliance

Consultant will enforce Labor Compliance requirements and maintain Certified Payroll records in compliance with the prevailing wage requirements. Consultant will perform labor interviews as necessary. Reporting for labor compliance will be done on a random spot-check basis as required by the federal funding program. Equal Employment Opportunity (EEO) requirements apply to all federal-aid construction contracts and all related subcontracts of \$10,000 or more. Reporting for labor compliance will be done on a random spot-check basis only. One report per week on the project will be used as an initial guide. The frequency may be reduced after a high degree of compliance has been verified. Consultant will use daily report forms used by Caltrans that are shown as Exhibit 16-C of LAPM.

9. Cost and Schedule

- a. Monitor and track the following:
 - Contract pay item quantities and payments
 - Contract change orders
 - Supplemental work items
 - Agency furnished materials
 - Contingency balance
 - Project budget
- b. Review and monitor Contractor's schedule and inform Agency of any significant changes or deviations in the schedule.
- c. Provide and maintain a Project staffing plan of field office personnel based on the Contractor submitted baseline schedule update. In cooperation with Agency, the staffing plan will be periodically updated to reflect Project progress and needs.

10. Contract Change Orders and Claims

- a. Receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to Agency will be accompanied by recommendations. Where applicable, convey proposed changes to design engineer, or other Project consultants. If the requested changes are accepted, negotiate and prepare appropriate Contract Change Orders for Agency's review and approval.

EXHIBIT "A"

SCOPE OF SERVICES (Continued. . .)

- b. Attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, Consultant will consult with Agency prior to its preparation. Unless directed otherwise by Agency, the preferred method of payment for Contract Change Orders will be as follows.
 - Agreed Price
 - Adjustment in compensation to a bid item
 - Time and materials or Force Account
- c. Perform force account analysis to validate cost submitted by the Contractor for contract change orders with agreed unit price, lump sum price, and adjustment in components. Analysis shall be based on realistic production and resource needs to complete the work.
- d. Attempt to identify all potential claims, track and monitor unresolved claims. Implement appropriate claims avoidance processes where in the best interests of Agency as determined by Agency's Program Manager.
- e. Assist Agency, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against Agency or the Project.

11. Safety Program

- a. Administer safety program (contractor is responsible for safety).

12. Quality Assurance Program

A Quality Assurance Program (QAP) is a sampling and testing program that will provide assurance that the materials and workmanship incorporated in each highway construction project are in conformance with the contract specifications. The main elements of a Quality Assurance Program are acceptance testing and independent assurance sampling and testing. For federal-aid projects off the National Highway System, local agencies may adopt their own Quality Assurance Program used for transportation projects not utilizing federal-aid funds, or adopt the Caltrans QAP. Caltrans will not process a Request for Authorization for Construction without verification of an adopted QAP

D. PROJECT CLOSE OUT PHASE

1. Prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
2. Coordinate submittal of contractor maintained as-built information to the design engineer for preparation of as-built drawings. .
3. Conduct a final walk-through with Agency, Contractor, and design engineer.
4. Assist Agency and Contractor in obtaining final release of all Project permits.
5. Coordinate any maintenance and training for the project.
6. Prepare final construction reports including the Project Completion Report.
7. Deliver to Agency Project files.

END OF EXHIBIT "A"

EXHIBIT "B"

SPECIAL REQUIREMENTS

Add the following to Section 2.0, Compensation:

Section 2.5 Cost Principles. 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 allowability of cost individual items. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the City.

Add the following to Section 2.0, Compensation:

Section 2.6 General Compliance with Laws and Wage Rates. Consultant warrants that its cost proposal, approved by City and identified on the Schedule of Compensation as set forth in Exhibit "C", complies with all federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1770 and 1775.

Add the following to Section 4.0, Coordination of Work:

Section 4.5 Subcontracting. Any subcontracts or contractual arrangements ("subcontracts") between the Consultants and other parties ("subcontractors") entered into in the performance of this Agreement to which the City is not named shall include all applicable provisions of this Agreement and the Consultant shall require that its subcontractors thereby comply with all such applicable provisions.

Add the following two paragraphs to Section 7.5, Audit and Inspection of Records:

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Federal 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; the Consultant, subcontractors, and the City shall maintain 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, the State Auditor, City, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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 the City's Chief Financial Officer. Not later than 30 days after issuance of the final audit report, the Consultant may request a review by the City's Chief Financial Officer of unresolved audit issues. The request for review

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

will be submitted in writing. Neither the pendency of a dispute nor its consideration by the City will excuse the Consultant from full and timely performance, in accordance with the terms of this contract.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.9 Covenant Against Contingent Fees. The 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, except bona fide employees, or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the City 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.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.10 Patent Rights. This agreement includes herein by reference applicable patent rights provisions described in 41 CFR 1-91 regarding rights to inventions.

Add the following to Section 10.0, Miscellaneous Provisions:

Section 10.11 Endorsement. The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.12 Disadvantaged Business Enterprise (DBE) Requirements.

The Agency has established a DBE goal for this Contract of 3.84 %.

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.

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

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 10-01 *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 10-02 *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.

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

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

5. RESOURCES

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

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

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials,

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

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.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.13 National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, the 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 the Consultant within the immediately preceding two-year period, because of the Consultant's failure to comply with an order of a federal court that orders the Consultant to comply with an order of the National Labor Relations Board.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.14 Statement of Compliance.

The Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.15 Debarment and Suspension Certificate.

The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

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 the City.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.16 Conflict of Interest.

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

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

Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions of this Article.

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

Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor 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.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.17 Rebates, Kickbacks or Other Unlawful Consideration.

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

Add the Following to Section 10.0, Miscellaneous Provisions:

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

Section 10.18 Prohibition of Expending Local Agency State or Federal Funds for Lobbying.

The Consultant certifies to the best of its knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any 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; the Consultant shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of the 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, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that it 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.

Add the Following to Section 10.0, Miscellaneous Provisions:

Section 10.19 Equipment Purchase Provisions.

Prior authorization in writing by the City shall be required before the Consultant enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$5,000 three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property

EXHIBIT "B"

SPECIAL REQUIREMENTS (Continued. . .)

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, the City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Consultant may either keep the equipment and credit the City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit the City in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined at the 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 the City and the Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City."

All subcontracts in excess \$25,000 shall contain the above provisions.

END OF EXHIBIT "B"

EXHIBIT "C"

SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Consultant shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Consultant based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Consultant's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

CONSTRUCTION MANAGEMENT SERVICES

Task Description	Cost
Pre-Construction Meeting	\$3,920
Project Administration	\$73,600
Construction Coordination	\$54,400
Construction Inspection, PW/Structural/Bridge	\$135,200
Materials Testing and Inspection	\$50,582
Managing Contract Cost Accounting System	\$18,400
Maintaining Project Files and Documentation	\$38,800
Labor Compliance	\$9,400
Cost and Schedule	\$23,600
Contract Change Orders and Claims	\$15,000
Safety Program	\$15,000
Quality Assurance Program	\$15,000
Project Close-Out	\$31,200
TOTAL	\$484,102

END OF EXHIBIT "C"

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

City and Consultant hereby mutually agree that the nature of the scope of services associated with this Contract, and the requirement to coordinate and obtain approvals by other agencies, including but not limited to Caltrans and FHWA, may cause the term of this Contract to exceed initial project schedule estimates. The term of this Contract shall automatically extend until such time as required approvals are obtained and all services identified in Exhibit "A" are completed.

The Consultant's schedule of performance is 160 working days from the actual Notice to Proceed (NTP) date indicated in the City's letter to Consultant following approval of this agreement by the City Council.

END OF EXHIBIT "D"

EXHIBIT "F"
CONTRACT FORMS

(FOLLOWS THIS PAGE)

Exhibit 10-F Certification of Consultant, Commissions & Fees

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this contract.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this contract involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

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

(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)

Certification of Final Indirect Costs:

Consultant Firm Name: _____

Indirect Cost Rate: _____ Date of Proposal Preparation (mm/dd/yyyy): _____

Fiscal Period Covered for Indirect Cost Rate Developed (mm/dd/yyyy to mm/dd/yyyy): _____

Contract Number: _____ Project Number: _____

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ _____ and the number of States in which the firm does business is _____.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 -Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

* Consultant Certification Signature: _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Contact Information:

Email: _____

Phone number: _____

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

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

Note: *Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31.*

23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

- Distribution:**
- 1) Original to Caltrans Audits and Investigations
 - 2) Retained in Local Agency Project Files

INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

Consultant Section

The Consultant shall:

1. **Local Agency Name** - Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed** - Enter the total DBE participation claimed. If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
11. **Preparer's Signature** - The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** - Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

Exhibit 10-O2 Consultant Contract DBE Information

(Inclusive of all DBEs listed at contract award. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Total Contract Award Amount: \$ _____			
5. Consultant Name: _____			
6. Contract DBE Goal %: _____			
7. Total Dollar Amount for <u>all</u> Subconsultants: \$ _____			
8. Total Number of <u>all</u> Subconsultants: _____			
Award DBE/DBE Information			
9. Description of Services to be Provided	10. DBE/DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
Local Agency to Complete this Section		13. Total Dollars Claimed	12. DBE Dollar Amount
20. Local Agency Contract Number: _____		\$ _____	
21. Federal-aid Project Number: _____		14. Total % Claimed	
22. Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:			
23. Local Agency Representative Name (Print) _____			
24. Local Agency Representative Signature _____	25. Date _____	15. Preparer's Signature _____	
26. Local Agency Representative Title _____	27. (Area Code) Tel. No. _____	16. Preparer's Name (Print) _____	
Caltrans to Complete this Section		17. Preparer's Title	18. Date
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:			19. (Area Code) Tel. No. _____
28. DLAE Name (Print) _____	29. DLAE Signature _____	30. Date _____	

- Distribution:**
- (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.
 - (2) Copy – Include in award package sent to Caltrans DLAE
 - (3) Original – Local agency files

INSTRUCTIONS - CONSULTANT CONTRACT AWARD DBE INFORMATION

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-1 *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subconsultants** - Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subconsultants on the Exhibit 10-O1 *Consultant Proposal DBE Commitment* form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for column 13.
14. **Total % Claimed** – Enter the total DBE participation claimed for column 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts of the LAPM*).
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

20. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
23. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
24. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
25. **Date** - Enter the date the Local Agency Representative signs the form.
26. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
27. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

Caltrans Section:

Caltrans District Local Assistance Engineer (DLAE) shall:

28. **DLAE Name (Print)** – Clearly enter the name of the DLAE.
29. **DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.
30. **Date** - Enter the date that the DLAE signs this section the form.

EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____ (City/County of) _____ established a Disadvantaged Business Enterprise (DBE) goal of _____ % for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

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

<u>Publications</u>	<u>Dates of Advertisement</u>
_____	_____
_____	_____
_____	_____

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

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

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

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

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

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

- E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

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

Name of Agency/Organization	Method/Date of Contact	Results
<hr/>		
<hr/>		

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.