

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH KIMLEY-HORN AND ASSOCIATES**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 19<sup>th</sup> day of November, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and KIMLEY-HORN AND ASSOCIATES, a North Carolina corporation ("Consultant").

**RECITALS**

A. City proposes to utilize the services of Consultant as an independent contractor to provide engineering design services for signal modernization for systemic safety improvements, as more fully described herein; and

B. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. No official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in City's Request for Proposals No. 25-04, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both incorporated herein.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to harassment, workplace violence, discrimination, minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

- (a) Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- (b) Contractor shall, if requested to so do by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- (c) If requested to do so by the City, Contractor shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- (d) Contractor shall recruit vigorously and encourage minority - and women-

owned businesses to bid its subcontracts.

- (e) Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- (f) The Contractor shall include the provisions set forth in subparagraphs (a) through (e) (above) in each of its subcontracts.
- (g) The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the State of California that the Consultant has, unless exempt, complied with the nondiscrimination requirements of Government Code § 12990 and 2 CCR § 8103.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

1.9. Workplace Safety. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold City harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

- (a) Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Costa Mesa City Risk Manager's Office by telephone. Contractor shall promptly submit to City a written report, in such form as may be required by City of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed

description of the accident and whether any of City's equipment, tools, material, or staff were involved.

- (b) Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the City the opportunity to review and inspect such evidence, including the scene of the accident.

1.10. State Prevailing Wage Rates.

- (a) No Consultant or Subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code § 1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.
- (b) The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer.
- (c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- (d) Payroll Records: 1) Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code § 1776 and as defined in 8 CCR § 16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker or other employees by the Consultant or Subconsultant; 2) The payroll records enumerated under paragraph 1) above shall be certified as correct by the Consultant under penalty of perjury. Each Consultant shall submit a certified copy of the records to the entity that requested the records within ten (10) calendar days after receipt of the written request.
- (e) When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City's Contract Administrator.
- (f) Penalty. The Consultant and any of its Subconsultants shall comply with Labor Code § 1774 and § 1775. Pursuant to § 1775, the Consultant and any Subconsultants shall forfeit to the City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public



work done under the Agreement by Consultant or by its Subconsultants in violation of the requirements of the Labor Code and in particular, Labor Code §§ 1770 to 1780, inclusive.

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

## **2.0. COMPENSATION AND BILLING**

2.1. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit “C,” (Consultant’s Cost Proposal) attached hereto and made a part of this Agreement. Consultant’s total compensation, based upon lump sum, shall not exceed Three Hundred Thousand Seven Hundred Twenty-Nine Dollars and Seventy-Five Cents (\$300,729.75).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant’s Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant’s services which have been completed to City’s sole satisfaction. City shall pay Consultant’s invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as “Additional Services” and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Prompt Payment of Withheld Funds to Subconsultants. The City may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to Consultant based on these acceptances. The City shall designate that no retainage will be held by the City from progress payments due to Consultant. Consultant and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the City’s prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

2.5. Records and Audits. Records of Consultant’s services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement and completion of work shall be no later than November 18, 2027. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit “D,” attached hereto and incorporated herein. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics (excluding COVID-19), material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a “Force Majeure Event”). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of thirty-six (36) months, ending on November 18, 2027, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by one (1) one (1) year period upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City’s written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in

accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.6. Excess Coverage. To the extent that Contractor maintains any insurance coverage(s) in amounts or types which are not expressly called out in this Agreement, such additional coverage(s) shall be deemed to be required by this Agreement.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the

parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Debarment and Suspension Certification: Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000.

- (a) By signing this agreement and Exhibit “K,” Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- (b) By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

6.5. Additional Contract Provisions – Federal. Contractor shall comply with all of the terms and conditions of Exhibit “F,” Article XXXII Title VI Assurances, Appendix A, which is attached hereto and incorporated herein by this reference as though set forth in full. Contractor shall execute and be bound by the provisions of Exhibit “G,” Article XXXII Title VI Assurances, Appendix B; Exhibit “H,” Article XXXII Title VI Assurances, Appendix C, Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program; Exhibit “I,” Article

XXXII Title VI Assurances, Appendix D, Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility, or Program; Exhibit "J," Article XXXII Title VI Assurances, Appendix E; Exhibit "K," Debarment and Suspension Certification; Exhibit "L," Additional Contract Provisions – Federal Provision; Exhibit "M," Disadvantaged Business Enterprises (DBE) Participation; Exhibit "N," Certification for Contracts, Grants, Loans, and Cooperative Agreements – Certification Regarding Lobbying (Appendix A, 44 C.F.R. Part 18); Exhibit "O," The Iran Contracting Act (ICA) of 2010; Exhibit "P," Consultant Contract DBE Commitment; Exhibit "Q," Prohibition on Expending Local Agency, State, or Federal Funds for Lobbying ; Exhibit "R," Cost Principles and Administrative Requirements; Exhibit "S," Retention of Records/Audits; Exhibit "T," Audit Review Procedures; and Exhibit "U," Subcontracting.

6.6. Notices. Any notices, documents, correspondence or other communications regarding interpretation of the terms of this Agreement, changes thereto, or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Kimley-Horn & Associates  
1100 West Town & Country Road  
Suite 700  
Orange, CA 92868

Tel: (714) 939-1030  
Attn: Jean Fares, P.E.

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626

Tel: (714) 754-5184  
Attn: Ramin Nikoui

Courtesy copy to:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | Purchasing

6.7. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.8. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.9. Governing Law. This Agreement shall be governed by and construed under the

laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

6.10. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.11. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.12. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby

agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.13. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.14. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.15. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 7920.000, *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 7924.510, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.16. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.17. Rebates, Kickbacks or Other Unlawful Consideration. The Consultant warrants this this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right, in its discretion, to terminate this Agreement without liability, to



pay only for the value of the work actually performed, or to deduct from this Agreement prices or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

6.18. Prohibition of Expending City, State, or Federal Funds for Lobbying.

- (a) The Consultant certifies, to the best of his or her knowledge and belief, that  
1) No State, Federal, or City appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite form making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- (d) The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

6.19. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.20. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.21. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be

deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.22. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.23. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.24. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.25. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.26. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.27. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.28. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. 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. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.29. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.30. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall

constitute one agreement.

6.31. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONSULTANT**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
[Name and Title]

**CITY OF COSTA MESA**

\_\_\_\_\_  
Lori Ann Farrell  
City Manager

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

ATTEST:

\_\_\_\_\_  
Brenda Green  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

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

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Ruth Wang  
Risk Management

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Ramin Nikoui  
Project Manager

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

DEPARTMENTAL APPROVAL:

\_\_\_\_\_  
Raja Sethuraman  
Public Works Director

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

APPROVED AS TO PURCHASING:

\_\_\_\_\_  
Carol Molina  
Finance Director

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

**EXHIBIT A**

**REQUEST FOR PROPOSALS**



## CITY OF COSTA MESA

P.O. BOX 12000 77 FAIR DRIVE CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC WORKS/ TRANSPORTATION SERVICES DIVISION

**DATE: SEPTEMBER 11, 2024**

**TO: ALL PROSPECTIVE BIDDERS**

**SUBJECT: ADDENDUM NO. 1 – REQUEST FOR PROPOSALS FOR SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107))**

Please forward this addendum to the appropriate individual as soon as possible. To assist our office in confirming the delivery of this addendum, please sign acknowledging receipt herein and e-mail a copy of this sheet to [Ramin.Nikoui@costamesaca.gov](mailto:Ramin.Nikoui@costamesaca.gov). **A COPY WILL NOT BE SENT BY MAIL.**

Received by: \_\_\_\_\_

Company: \_\_\_\_\_

All bidders shall register with PlanetBids.com in order to retrieve addenda. It is the responsibility of each prospective bidder to check the City's PlanetBids.com portal at: <https://www.planetbids.com/portal/portal.cfm?CompanyID=45476> on a DAILY basis through the close of bids for any applicable addenda or updates.

### **CLARIFICATIONS TO REQUEST FOR PROPOSALS:**

The following questions were received through Planetbids prior to the deadline for written questions including subsequent answers and clarifications. Please note that all duplicate questions have been omitted.

1. Can we include multiple intersections on one sheet.  
*A. Yes, multiple intersections can be used on one sheet.*
2. We recently won the Staff Augmentation Contract, would Iteris be eligible to submit the 2nd proposal (Signal Modernization RFP) without causing any conflict case?  
*A. Yes, any consulting firms that have on-call contracts with the City can still propose on City projects. If one of the City's on-call consultants is awarded the project, none of the on-call staff will be able to work on any aspect of the project to avoid conflicts of interest.*
3. The Proposal Format Guidelines state that proposals "should contain no more than 12 typed pages". We request that the page limit be increased to 30 or 40 pages in order to effectively address the scope and other requirements listed in the RFP.

- A. *City staff has determined that the 12-page limit called out in the RFP is adequate for this type of project. Please note that resumes of key staff, federal forms, financial docs, pricing forms, and City required forms are not counted against the 12-page limit.*
4. Could the PDF HSIP (non-scanned & clickable) application be provided? At a minimum, could the HSIP Analyzer / Detailed Engineer's Estimate be provided? Will any as-builts / CAD files be provided?
- A. *The HSIP grant application will be provided to the selected consultant upon award. The City does not have as-builts or CAD files.*
5. What is the City's design budget for this project? What is the City's anticipated design schedule for this project? Are there any HSIP funding deadlines the consultant will be required to meet? Can the City provide the itemized construction cost estimate from the HSIP grant application?
- A. *The City has a design budget of \$300k for the project. Per the RFP, the City is anticipating 120 calendar days to complete the project. The HSIP grant application will be provided to the selected consultant upon award.*
6. Under Qualifications & Experience of the Firm; Item 8 states "Provide a sample of each background investigation for each contract". – What does this mean
- A. *Per the City's Finance Department, "If there was an issue between the Consultant and whomever they had a contract with, then [...] the city would like to know the background/history of the issues"*
7. In Qualifications & Experience of the Firm it states, "Provide a sample of each background investigation for each contract". If this is for sample plans please confirm this can be placed in the Appendix due to the page count.
- A. *If applicable, please include in the Appendix.*
8. Do we need to include a 10-H Form?
- A. *The 10-H form has been removed from Caltrans Local Assistance Manual and renamed as the sample cost proposal. Please refer to the RFP for specific instructions regarding preparation and submission of the cost proposal.*
9. Does a Cover Page count towards the 12-page count?
- A. *Yes, the cover page is included in the page count.*



10. Has any technical reports have been prepared for the proposed project, and if so, can those technical reports be provided with the RFP?

*A. Staff does not understand what is meant by technical report. If this is referring to the application, please note that the HSIP application will be provided to the selected consultant upon award.*

11. In 3. Proposer's Minimum Requirements it states, "d. The Contractor shall maintain a local office with a competent representative who can be reached during normal working hours or emergencies who is authorized to make decisions on matters pertaining to this contract with the City. Office facilities that support daily operations must be within ninety (90) miles of the City". Does a home office satisfy the requirements outlined under item D above?

*A. The office must be an official local office of the consulting firm and would need to be listed on the consultant's website as a satellite office to be eligible.*

12. In Financial Capacity: it states, "The City is concerned about proposers' financial capability to perform, and therefore, is requesting copies of audited financials from the past three years to allow an evaluation of firm's financial capabilities". This information is confidential. Please confirm it will be separate confidential upload or that it can be placed with the Cost information?

*A. This information is required by the City's Finance Department. If possible, please include this information with the main proposal as a separate file when uploading to Planetbids. It should not be submitted with the cost proposal. After the highest ranked consultant is determined and awarded, consultant firms may reach out and request this information to be deleted.*

13. Qualifications & Experience of the Firm: #2, 3, and 4 are asking for information that is also requested in Key Personnel. In which section should this information be placed?

*A. Aligned with the evaluation criteria in the RFP, information regarding staffing should be placed in key personnel section and the qualifications & experience section should focus on the consulting firm.*

14. Can the text for Disclosure and Sample Professional Service Agreement be included in the letter instead of a section in the Proposal?

*A. No, please include as part of the proposal.*

15. In 18. Federal-Aid Provisions you are requesting a Exhibit 10-O2 Consultant Contract DBE Commitment. Please confirm that this will be placed in the cost file?

*A. The highest ranked consultant will submit the Exhibit 10-O2 form to the City after notice of intent to award but prior to the actual award so that it can be*

*included in the Contract. The Exhibit 10-O1 form should be included in the proposal (not the cost proposal)*

16. In the RFP it states, "18. Federal-Aid Provisions: Exhibit 10-O2 Consultant Contract DBE Commitment – prior to execution of contract". Do you want this form now or at the time of award?

*A. Please see answer to question 15.*

17. Should "Exhibit 10-01 Consultant Proposal DBE Commitment" be included in appendix with other forms (RFP Appendix C)?

*A. Please include this form within the Appendices of your proposal.*

The contents of this addendum shall have precedence over all related provisions within the contract documents. It is the intent of the City of Costa Mesa to clarify the above-referenced items to all bidders. Should it be necessary to request clarification on these matters, please send your request via e-mail at [Ramin.Nikoui@costamesaca.gov](mailto:Ramin.Nikoui@costamesaca.gov).

Please acknowledge receipt of this bid addendum by filling out and signing within the rectangle on the first page of this bid addendum and e-mailing it to [Ramin.Nikoui@costamesaca.gov](mailto:Ramin.Nikoui@costamesaca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ramin', with a stylized flourish extending from the end.

Ramin Nikoui, PE, TE, PTOE  
Senior Engineer



**REQUEST FOR PROPOSAL**

**FOR**

**SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS  
(FEDERAL PROJECT NO. HSIPL-5312(107))**

**RFP NO. 25-04**



**PUBLIC WORKS**

**CITY OF COSTA MESA**

**Released on**

**August 28, 2024**

**REQUEST FOR PROPOSAL  
FOR  
SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS  
(FEDERAL PROJECT NO. HSIPL-5312(107))**

The City of Costa Mesa (hereinafter referred to as the “City”) is requesting Proposals from qualified consultants to provide professional engineering design services for the development and construction bid documents of the City’s federally-funded Signal Modernization for Systemic Safety Improvements (Federal Project No. HSIPL-5312(107)). The awarded Contractor, (hereinafter referred to as “Contractor”) shall be in accordance with the Sample Professional Service Agreement, **Appendix B** terms, conditions, and scope of work. Prior to submitting a Proposal, Proposers are advised to carefully read the instructions below, including the Sample Professional Service Agreement and any solicitation appendix/exhibits. The schedule for the design phase is anticipated to be four (4) months; however the term is expected to be for 3 years with 2 one-year renewal options. The City reserves the right to award one or more contracts for this service.

**I. GENERAL INFORMATION**

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with an annual General Fund budget of over \$189.9 million and a total budget of \$240.10 million for fiscal year 2024-2025.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 115,000 and has a land area of 16.8 square miles. It is located in the northern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine.

The City is a “full service city” providing a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs.

The City of Costa Mesa is home of the Segerstrom Center for the Arts, Orange County Fairgrounds, South Coast Repertory Theater and the South Coast Plaza Shopping Center, which is the single largest commercial activity center in the City. The volume of sales generated by South Coast Plaza secures its place as the highest volume regional shopping center in the nation.

The successful Proposer, shall have experience in similar types of services. All Proposers responding to this Request for Proposal (RFP) will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, ability to meet the requested services, adequate staffing, reference check, understanding of services, cost and responsiveness to the needs and concerns of the City of Costa Mesa.

1. **Important Notice:** The City has attempted to provide all information available. It is the responsibility of each Proposer to review, evaluate, and, where necessary, request any clarification

prior to submission of a Proposal. **Proposers are not to contact other City personnel with any questions or clarifications concerning this Request for Proposal (RFP).** The City's Public Works Department contact set out in RFP, Section II, Subsection 2, Inquires, will provide all official communication concerning this RFP. Any City response relevant to this RFP other than through or approved by City's Public Works Department is unauthorized and will be considered invalid.

If clarification or interpretation of this solicitation is considered necessary by City, a written addendum shall be issued and the information will be posted on PlanetBids. Any interpretation of, or correction to, this solicitation will be made only by addendum issued by the City's Public Works Department. It is the responsibility of each Proposer to periodically check PlanetBids website to ensure that it has received and reviewed any and all addenda to this solicitation. The City will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

2. **Schedule of Events:** This Request For Proposal shall be governed by the following schedule:

<b>Release of RFP</b>	<b>August 28, 2024</b>
<b>Deadline for Written Questions</b>	<b>September 10, 2023 at 11:00 a.m.</b>
<b>Responses to Questions Posted</b>	<b>September 12, 2024</b>
<b>Proposals are Due</b>	<b>September 19, 2024 at 2:00 p.m.</b>
<b>Approval of Contract</b>	<b>TBD</b>

**\*\*All dates are subject to change at the discretion of the City.**

3. **Proposer's Minimum Requirements:** Interested and qualified Proposers that can demonstrate their ability to successfully provide the required services outlined in **Appendix A– Scope of Work**, of this RFP are invited to submit a proposal, provided they meet the following requirements. All requirements must be met at the time of the proposal due date. **If these requirements are not met, the proposal may not receive further consideration, as determined in the sole discretion of the City.**

a. The consultant must provide five references for municipal projects of similar size and scope that have been completed within the last five years in California.

b. Projects considered similar in scope include traffic signal design projects with construction bid documents for other municipalities and agencies.

c. The proposer shall have five (5) years of current experience in providing traffic signal modification design services for cities and other government agencies.

d. The Contractor shall maintain a local office with a competent representative who can be reached during normal working hours or emergencies who is authorized to make decisions on matters pertaining to this contract with the City. Office facilities that support daily operations must be within ninety (90) miles of the City.

e. All Proposers must identify the project manager, and the individual authorized to negotiate the contract on behalf of the consulting firm; and provide an organization chart showing all proposed key project team members.

f. The proposer shall have experience managing federally funded projects administered by Caltrans. The proposer shall have experience working with the Local Assistance Procedures Manual (LAPM) and all the required federal procedures and forms.

## II. GENERAL INSTRUCTIONS AND PROVISIONS

1. **Proposal Format Guidelines:** Interested entities or contractors are to provide the City of Costa Mesa with a thorough Proposal using the following guidelines: Proposal should be typed and should contain no more than 12 typed pages using a 12-point font size, including cover letter, Index/Table of Contents, tables, charts, and graphic exhibits, but excluding resumes of key people and pricing forms. Each Proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following Proposal sections are to be included in the Proposer's response:

- **Cover Letter:** A cover letter, not to exceed two pages in length, should summarize key elements of the Proposal. An individual authorized to bind the Contractor must sign the letter. Indicate the address and telephone number of the contractor's office located nearest to Costa Mesa, California, and the office from which the project will be managed. And include proposed working relationship among the offering agency and subcontractors, if applicable.
- **Background and Project Summary Section:** The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to **Scope of Work, Appendix A** of this RFP.
- **Project Approach and Methodology:** Provide a detailed description of the approach and methodology that will be used to fulfill each requirement listed in the Scope of Work of this RFP. The section should include:
  1. Describes familiarity of project and demonstrates understanding of work and project objectives moving forward.
  2. Detailed description of efforts your firm will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
  3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.
  4. Identifies the project's potential issues and response to them.
  5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, safe, and cost-effective operations or increased performance capabilities.
- **Qualifications & Experience of the Firm:** Describe the qualifications and experience of the organization or entity performing services/projects within the past eight years that are

similar in size and scope to demonstrate competence to perform these services. Information shall include:

1. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to provide design services.
  2. Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
  3. Overall organization of the team is relevant to City of Costa Mesa needs.
  4. Team is managed by an individual with appropriate experience in similar project. This person's time is appropriately committed to this project.
  5. Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.
  6. If the owner is a corporation please provide: Name of corporation, corporate office street address, city, state, and zip code, state where incorporated, date of incorporation, first and last name of officers, local office address, city, state & zip, and the date local office opened its doors for business.
  7. If the owner is a partnership or joint venture, please provide: Name of partnership or joint venture, principal office street address, city, state, and zip code, state of organization, date of organization, first and last name of general partner(s), local office address, city, state, and zip code, and date local office opened its doors for.
  8. Provide a list of current and previous contracts similar to the requirements for this project in Costa Mesa, including all public agencies served (if any). For each, provide a brief description of the scope of work performed, the length of time you have been providing services, and the name, title, and telephone number of the person who may be contacted regarding your organization's service record. Provide a sample of each background investigation for each contract.
  9. Submit a description of the organization's qualifications, experience and abilities that make it uniquely capable to provide the services specified in the Scope of Work.
- **Financial Capacity:** The City is concerned about proposers' financial capability to perform, and therefore, is requesting copies of audited financials from the past three years to allow an evaluation of firm's financial capabilities.

Per federal requirements, a contract will not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31, as noted in LAPM Ch. 10, at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch10.pdf>.

- **Key Personnel:** It is essential that the Proposer provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Proposer must agree to assign specific individuals to the key positions.

- Identify the members of the staff who would be assigned to act for Proposer's firm in key management and field positions providing the services described in the Proposal, and the functions to be performed by each.
- Include resumes or curriculum vitae of each such staff member, including name, position, telephone number, email address, education, and years and type of relevant experience. Describe for each such person, the relevant role and functions for each project.
- **Cost Proposal:** Provide a cost proposal for the project. Please provide a cover letter stating the not-to-exceed total fee for the project. The method of payment for this project shall be **lump sum**. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and the most qualified consultant has been selected. Proposals shall be valid for a minimum of 180 days following submission.

The following applies to all consultant **AND** subconsultants:

- The cost proposal must be in the same or similar format as the sample cost proposal form provided in the Local Assistance Procedures Manual (LAPM) and must also be provided by all subconsultants as supplement to the prime consultant's cost proposal package. The sample cost proposal can be accessed online at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/ae/files/sample-cost-proposal-1-for-contracts-with-cost-plus-fixed-fee-or-lump-sum.pdf>. The proposal must identify the specific assigned personnel, their direct labor rates and their number of hours. All indirect cost rates must be developed in compliance with Federal cost principles 48 CFR 31 and shall be fixed for the duration of the contract.
  - To help alleviate and remove potential barriers with developing Indirect Cost Rates for federal projects, the Division of Local Assistance (DLA) has adopted Caltrans Division of Procurement and Contract's (DPAC) Safe Harbor Rate (SHR) process and rates. The SHR information and rates can be found at the DLA Consultant Selection and Procurement website: <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selectionprocurement>.
  - Use of the SHR is voluntary on behalf of the A&E consulting firm. The City has the discretion to determine certification of eligibility based on requirements shown on the SHR certification form which can be accessed online at: <https://dot.ca.gov/-/media/dot-media/programs/procurement-contracts/documents/ca-safe-harbor-rate-form.pdf>
  - If the A&E consulting firm would like to use their own indirect cost rates, please attach the Certification of Indirect Costs and Financial Management System. This form can be accessed online at: [https://ig.dot.ca.gov/-/media/ig-media/documents/fdr/ig\\_certification\\_indirect\\_costs\\_financial\\_management\\_system\\_v2.pdf](https://ig.dot.ca.gov/-/media/ig-media/documents/fdr/ig_certification_indirect_costs_financial_management_system_v2.pdf)
- Proposers are to also provide a separate table breakdown of the lump sum proposal based on milestones/deliverables. The contract will be paid based upon percentage of



work complete of the defined milestones. If work tasks or deliverables are proposed that are not specifically listed in the City's Scope of Work, please identify those costs as separate and optional. Please make sure that the costs match with the aforementioned sample cost proposal.

- **Disclosure:** Please disclose any and all past or current business and personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee. **Any past or current business relationship may not disqualify the firm from consideration.**
- **Sample Professional Service Agreement:** The firm selected by the City will be required to execute a Professional Service Agreement with the City. A sample of the Agreement is enclosed as **Appendix B**. Because this project is federally funded, the Agreement will be modified to include federal requirements including language provided in the LAPM Exhibit 10-R form. The Exhibit 10-R form can be accessed online at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c10/10r.pdf>.

The City will prepare the Agreement when a consultant is selected to perform the work. If a Proposer has any exceptions or conditions to the example Agreement, these must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.

- **Checklist of Forms to Accompany Proposal:** As a convenience to Proposers, following is a list of the forms, **Appendix C** included in this RFP, which should be included with Proposals:
  1. Vendor Application Form
  2. Company Profile & References
  3. Ex Parte Communications Certificate
  4. Disclosure of Government Positions
  5. Disqualifications Questionnaire
  6. Bidder/Applicant/Contractor Campaign Contribution

## **2. Process for Submitting Proposals:**

- **Content of Proposal:** The Proposal must be submitted using the format as indicated in the Proposal format guidelines.
- **Preparation of Proposal:** Each Proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.
- **Cost for Preparing Proposal:** The cost for developing the Proposal is the sole responsibility of the Proposer. All Proposals submitted become the property of the City. Cost proposal shall be submitted in a **separate** file. The cost proposal is confidential and will be unsealed after all proposals have been reviewed, and the most qualified consultant has been selected. Proposals shall be valid for a minimum of 180 days following submission.

- **Forms to Accompany Proposal:** **Appendix C** forms shall be attached at the end of the Proposal with the exception of the Cost Proposal which shall be submitted in a separate file.
- **Number of Proposals:** Submit one (1) PDF file format copy of your proposal in sufficient detail for thorough evaluation and comparative analysis
- **Submission of Proposals:** Complete written Proposals must be submitted electronically in PDF file format via the [planetbids.com](http://planetbids.com) website not later than **2:00 p.m. (P.S.T) on September 19, 2024**. Proposals will not be accepted after this deadline. Proposals received after the scheduled closing time will not be accepted. It shall be the sole responsibility of the Proposer to see that the proposal is received in proper time. Faxed or e-mailed Proposals will not be accepted. **NO EXCEPTIONS.**
- **Inquiries:** Questions about this RFP must be posted in the Q & A tab on Planetbids no later than **September 10, 2024 at 11:00 A.M.** The City reserves the right not to answer all questions.

The City reserves the right to amend or supplement this RFP prior to the Proposal due date. All addendum(s), responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, Costa Mesa-Official City Web Site, Business-Bids & RFP's. Proposers should check this web page daily for new information.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any Proposal for violation of this provision. No questions other than posted on Planetbids will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance:** This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all Proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any Proposal. All Proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the Proposal, it should be clearly identified.
- **Insurance & W-9 Requirements:** Upon recommendation of contract award, Contractor will be required to submit the following documents with ten (10) days of City notification, unless otherwise specified in the solicitation:
  - **Insurance** - City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Bidder must furnish the City with the Certificates of Insurance proving coverage as specified in the sample contract.

- **W-9** – Current signed form W-9 (Taxpayer Identification Number & Certification) which includes Contractor's legal business name(s).

**3. Evaluation Criteria:** In accordance with federal requirements, the responsive responsible proposer shall be determined based on evaluation of qualitative factors. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub-criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

1. **Project Approach & Methodology ----- 30%**
2. **Qualifications & Experience of Firm ----- 20%**
3. **Experience and Record of Success on Similar Projects ---- 20%**
4. **Key Personnel ---- 20%**
5. **Familiarity with Federal Procedures ---- 10%**

**4. Evaluation of Proposals and Selection Process:** The professional services contract will not be awarded based on competitive bidding. The City's evaluation and selection process will be conducted in accordance with The Brooks Act (40 USC, Section 1104) and Caltrans LPM, Chapter 10. The consultant shall be selected based on fair and open competitive negotiations, demonstrated competence, and professional qualifications, at a fair and reasonable price. All proposals will be evaluated by a committee assembled by the City of Costa Mesa. Proposals will first be screened to ensure responsiveness to the RFP. An incomplete proposal, a Proposal that does not include all the documents required to be submitted by this RFP will be deemed nonresponsive and rejected. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their Proposals. The Committee will then rank the proposals. The committee will evaluate each proposal that meets the qualification requirements set forth in this RFP. The Committee may also contact the Proposer's references.

**A. Responsiveness Screening:** Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any Proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their Proposals.

**B. Initial Proposal Review:** The Committee will initially review and score all responsive written Proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any Proposal in which a Proposer's approach or qualifications are not considered acceptable by the City. An unacceptable Proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the highest ranked consultant or proceed to interview the highest ranked consultants.

**C. Interviews, Reference Checks, Revised Proposals, Discussions:** Following the initial screening and review of Proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for **the week of October 1st** and will be conducted at City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, CA 92626 or virtually at the discretion of the City. The dates are subject to change. The individual(s) from Proposer's organization that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the Proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a Proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award. Once the highest ranked consultant is identified, the City will open the Cost Proposal and enter negotiations.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

**5. Protests:** The consultant shall follow the protest procedures and dispute resolution process per the Code of Federal Regulations 2 CFR Part 200.318(k) and 2CFR 172.5(c)(18).

**6. Accuracy of Proposals:** Proposers shall take all responsibility for any errors or omissions in their Proposals. Any discrepancies in numbers or calculations shall be interpreted to reflect the cost to the City.

If prior to contract award, a Proposer discovers a mistake in their Proposal which renders the Proposal unwilling to perform under any resulting contract, the Proposer must immediately notify the facilitator and request to withdraw the Proposal. It shall be solely within the City's discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of "all or none" of the items, then any withdrawal must be for the entire Proposal. If the solicitation provided for evaluation and award on a line item or combination of items basis, the City may consider permitting withdrawal of specific line item(s) or combination of items.

**7. Responsibility of Proposers:** The City shall not be liable for any expenses incurred by potential Contractors in the preparation or submission of their Proposals. Pre-contractual expenses are

not to be included in the Contractor's Pricing Sheet. Pre-contractual expenses are defined as, including but not limited to, expenses incurred by Proposer in:

- Preparing Proposal in response to this RFP;
- Submitting that Proposal to the City;
- Negotiating with the City any matter related to the Proposal; and,
- Any other expenses incurred by the Proposer prior to the date of the award and execution, if any, of the contract.

**8. Confidentiality:** The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the Proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire Proposal as confidential nor designate its Price Proposal as confidential.

Submission of a Proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees and costs that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

**9. Ex Parte Communications:** Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's Proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications Form, **Appendix C** with their Proposals certifying that they have not had or directed prohibited communications as described in this section.

**10. Conflict of Interest:** The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq., or Sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

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

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

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

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

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

Some examples of conflict of interest are the following:

- Certified Materials Tester(s) or Plant Inspector(s) from the same company that performs Quality Control for the Contractor and Quality Assurance for the City of Costa Mesa on the same project.
- Providing services to construction contractor's subcontractors, fabricators, equipment installer, material suppliers and other firms associated with the projects listed in the Contract can be a potential conflict of interest when such contractor teams are identified.

**11. Disclosure of Governmental Position:** In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their Proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached Disclosure of Government Positions Form, **Appendix C**.

**12. Conditions to Agreement:** The selected Proposer will execute a Professional Service Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as **Appendix B** to this RFP, which will be modified by the City to include federal requirements.

All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement. **The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist.**

Submittal of a Proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample agreement for services unless the Proposer includes with its Proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement.

**13. Disqualification Questionnaire:** Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has **ever** been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A Proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation, **Appendix C**.

**14. Standard Terms and Conditions:** The City reserves the right to amend or supplement this RFP prior to the Proposal due date. All addendum(s) and additional information will be posted via PlanetBids. Proposers should check this web page daily for new information.

**15. Schedule:** Due to federal funding deadlines, the City needs to expedite this project and anticipates a schedule of 120 calendar days to complete the scope of work in **Appendix A**.

**16. Disadvantaged Business Enterprise (DBE) Requirements:** Since the Project is federally-funded, Disadvantaged Business Enterprise (DBE) requirements are federally mandated. The City of Costa Mesa has established a **DBE goal for this Contract of 20%**. Consultants must satisfy DBE requirements in conformance with the California Department of Transportation (Caltrans) Local Assistance Procedures Manual (LAPM) Chapter 9. The Notice to Proposers DBE Information LAPM Exhibit 10-I is included for reference in **Appendix D**.

**17. Title VI Assurances:** Title VI Assurances Appendices A and E will be included in each consultant contract. Title VI Assurances Appendices B, C, and D will be included, if applicable. The consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract and include Title VI Assurances Appendices B, C, and D if applicable. Refer to LAPM Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXII Title VI Assurances. Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

**18. Federal-Aid Provisions:** the consultant's services for the Project are federally funded, which necessitates compliance with additional requirements. **The consultant shall complete and submit the following forms/exhibits from the Local Assistance Procedures Manual (LAPM) with the proposal to be considered responsive.** These forms and instructions can be found online at:

<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

- Exhibit 10-O1 Consultant Proposal DBE Commitment - The City's current DBE goal for this contract is **20%**.
- Exhibit 10-O2 Consultant Contract DBE Commitment – prior to execution of contract
- Exhibit 10-Q Disclosure of Lobbying Activities
- Exhibit 15-H Proposer/Contractor Good Faith Efforts (if applicable) – Required only if the DBE goal is not achieved to show that the proposer made a good faith effort.

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

- Exhibit 9-P Prompt Payment Certification – the consultant is required to submit this form to the City by the 15<sup>th</sup> of the month following the month of any payment(s) to a subconsultant, whether DBE or not. If the prime consultant does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.
- Exhibit 10-G Individual A&E Task Order DBE Tracking Sheet
- Any other relevant forms required during the project as determined by the Caltrans LAPM.

Upon completion of the contract, the selected consultant shall complete and submit the following forms:

- Exhibit 9-P Prompt Payment Certification – final version
- Exhibit 17-F Final Report – Utilization of DBE
- Exhibit 17-O DBE Certification Status Change
- Any other relevant forms required for project completion/close-out.



The consultant shall demonstrate familiarity and have experience with providing services for federally funded projects, and a clear understanding of the requirements/needs to facilitate the project through Caltrans Local Assistance and Local Assistance Procedures Manual, which can be accessed on: <https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>.

**APPENDIX A**  
**SCOPE OF SERVICES**  
**FOR**  
**SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS**  
**(FEDERAL PROJECT NO. HSIPL-5312(107))**

**Introduction:** The Public Works Department of the City of Costa Mesa (City) is requesting proposals for professional engineering services for the design of the City's Signal Modernization for Systemic Safety Improvements project (Federal Project No. HSIPL-5312(107)).

**SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS**  
**FEDERAL PROJECT NO. HSIPL-5312(107)**

**BACKGROUND**

In 2022, the City of Costa Mesa completed a Local Road Safety Plan (LRSP) which identified a framework to identify, analyze and develop traffic safety enhancements on the City's roadway network. The LRSP was developed in response to local issues and needs. The LRSP identified systemic infrastructure improvements that can be implemented throughout the City to enhance safety for all modes of travel. In late 2022, using data and recommendations from the LRSP, the City applied for grant funds for the 11<sup>th</sup> cycle of the Highway Safety Improvement Program (HSIP). In 2023, the City was awarded federal grant funds to design and implement systemic safety improvements to 129 of the City's 131 signalized intersections, shown in **Exhibit A**.

The Signal Modernization for Systemic Safety Improvements project (Project) will design and implement proven safety countermeasures for all users including implementing Leading Pedestrian Intervals at 49 intersections, installing countdown pedestrian signal heads at 43 intersections, installing new retroreflective border signal backplates at 129 signalized intersections to enhance visibility and compliance, upgrading all remaining 8" signal heads in the City to 12" signal heads, installing battery backup systems at major intersections to keep signals and pedestrian crossings active during unexpected power outages, and installing emergency vehicle preemption devices at 30 intersections to complete the preemption network for the City's emergency services. Maps and a location list showing the various improvements at each intersection can be found in **Exhibit B**.

The following description of work defines the general project requirements. Associated tasks and provisions necessary for a complete project, but not specifically defined herein are requested to be addressed in the proposal and undertaken within the proposed "Not to Exceed" contract fee.

The scope of services generally consists of the following:

- **Phase 1:** Detailed Citywide Traffic Signal Inventory
- **Phase 2:** Preliminary Design
- **Phase 3:** Environmental Approval

- **Phase 4:** Final design plans, specifications, and estimates (PS&E)

Final PS&E shall be developed as a turnkey project for advertisement and construction. The project shall not be advanced until preliminary requirements are addressed and clear direction is established. The consultant shall have total responsibility for the accuracy and completeness of all work and services.

## **PHASE I – Detailed Citywide Signal Inventory**

The project area is defined as 129 of the City's 131 signalized intersections in the City. This phase generally consists of the following tasks:

1. Meet with City staff to define and clarify the work plan and project elements. The City will provide the consultant with the grant application with the approved list of locations and the improvements for each location.
2. Conduct a detailed signal inventory at 129 of the City's 131 signalized intersections. The consultant will conduct a thorough in-person field review of existing conditions at each signalized intersection which includes but is not limited to the inventory of the number of pedestrian signal heads without countdown capabilities and where they are located, the number of 8" signal heads at the intersection and what poles they are located on, the brand/manufacturer of each traffic signal head, the type of each signal head (3-section, 4-section, etc.) and the condition of each signal head and whether or not it needs maintenance (needs to be repaired, replaced or repainted). The consultant shall also check the conduit fill at the locations where there is proposed Emergency Vehicle Preemption (EVP) systems to make sure that the existing underground traffic signal conduits have adequate space for the additional EVP cable. Photos should be taken of every approach to an intersection that shows all signal heads in a given direction for reference. Photos of the inside and outside of the signal cabinets should also be taken.
3. Compile the field review notes and data obtained from the signal inventory into a detailed table. Meet with City staff to discuss preliminary design approach.

## **PHASE II – Preliminary Design**

This Preliminary Design phase consists of the preparation of a detailed table of all proposed improvements consistent with the City's grant application and the consultant's signal inventory. The Preliminary Design phase shall include typical drawings and typical details for the installation of the various improvements and intersection-level drawings if necessary. The preliminary design shall conform to the latest editions of the California Manual on Uniform Traffic Control Devices (CA MUTCD), state and federal standards, and City of Costa Mesa standards.

## **PHASE III – Environmental Approval**

This phase includes the necessary environmental analysis to assess the design improvements and prepare environmental analysis documents to satisfy CEQA/NEPA requirements for a federally funded construction project administered by Caltrans.

The consultant shall prepare a Preliminary Environmental Study (PES) document, suitable for a federally funded construction project, analyzing and describing any environmental impacts and mitigations for the Project. The consultant shall meet California Environmental Quality Act

(CEQA) and National Environmental Policy Act (NEPA) requirements and follow all procedures per the Caltrans LAPM Chapter 6 and Chapter 7. All associated work required to receive state and federal environmental compliance shall be included within the subject scope of services, and other environmental studies as required, in addition to copying, distribution/mailing of notices, and providing all materials and services as necessary. The consultant shall submit copies of the environmental document, associated technical reports, and other materials for City and Caltrans review, and address all elements to achieve state and federal environmental clearance. The City believes this project meets the criteria for a categorical exemption and categorical exclusion.

#### **PHASE IV – Final Design Plans, Specifications & Estimates (PS&E)**

**\*\*For federally funded projects, final design shall not begin until environmental approval has been received and verified.\*\***

This phase consists of the preparation of final design plans, specifications and estimates (PS&E). PS&E and utility coordination shall conform to the latest editions (including errata) of: California Manual of Uniform Traffic Control Devices (CA MUTCD), state and federal standards, and City of Costa Mesa standards. Plans shall be 1" = 20' or 1" = 40' scale horizontally, depending on the type of the plan, on standard 24" x 36" sheets. The latest version of AutoCAD shall be utilized. Plans are to be fully detailed to advertise and construct the project, including, but not limited to:

- Detailed Traffic Signal Inventory Table of Proposed Improvements
- Typical Drawings and Details
- Intersection-level drawings (if necessary)
- Contract documents including Specifications
- Special and technical provisions
- Cost Estimates
- Processing and approvals

Plans, specifications, and estimates shall be submitted at 60%, 90%, and 100% milestones. All PS&E submittals shall be submitted electronically (.docx, .xlsx, .pdf, .dwg etc.). The City will provide comments at each milestone for consultant revision of the PS&E. The plans will be prepared such that a Contractor can identify what needs to be installed at each subject intersection using the proposed table of improvements and any details, photos or intersection level drawings.

1. Utilities (if necessary) - Perform all necessary research to establish precise location of all utilities and utility easements. Coordinate with all utility companies and underground service alert (USA) to determine the nature and location of all possible relocations and associated costs. Comply with the City adopted "Utility Coordination Procedures" attached. Determine where interfaces with existing facilities will occur as a result of the construction of this project. Consult with affected utility companies requiring relocations, and resolve any conflicts, keeping City staff informed in writing, including the possibility of undergrounding utilities presently on poles along the project area. Compile information in "Utility File" and submit to City. Utility research would only be necessary for intersections that need new conduit installed.

2. Complete project contract documents and special provisions in a format consistent with current City projects and guidelines. A sample of the construction contract agreement will be furnished to the Consultant by the City.
3. For construction budgeting purposes, submit to the City preliminary construction estimates with PS&E submittals at 60% and 90% completion, and any significant updates of the estimates as design work progresses. Prepare the final (100%) detailed construction quantity and cost estimate. 100% Plans and specifications shall be signed and stamped by the Consultant.
4. Prepare and submit a Resident Engineer's file containing, at a minimum, final construction quantities and cost estimates with background calculation work sheets; survey data; Utility File; Right-of-Way File, CAD files, and all relative project information.
5. The selected Consultant shall include items not specified as necessary to achieve completion and approval of the final design plans, specifications and estimates.
6. The consultant shall efficiently address all project components as required to obtain State and Federal right-of-way certification and E-76 Construction Authorization. The consultant will be responsible for preparing all required Federal forms/submittals including calculation of the DBE goal for construction, PS&E Certification, addressing all requirements to obtain Right-of-Way Certification, preparation of the Request for Authorization to Proceed with Construction to Caltrans Local Programs.

**QUALITY ASSURANCE/QUALITY CONTROL** - Quality Control shall be consistently and thoroughly applied throughout project development. Assigned QA/QC staff shall be technically well qualified to conduct the appropriate level of oversight, and demonstrate a concerted and sustained commitment to provide a high quality product. Concise written records shall be maintained by the Consultant on all activities. Firms considering proposal submittals are requested to have an in-house technical level of expertise to professionally address all aspects of the project.

**The City highly emphasizes the importance of QA/QC on all its project. The consultant shall thoroughly QA/QC PS&E submittals to ensure minimal errors and omissions and that all standards (e.g. CA MUTCD, Federal, State and City Standards, etc.) are met and followed. Submittals found to not have properly undergone QA/QC will not be reviewed by staff and will be sent back to the consultant to undergo QA/QC.**

Project Design meetings shall be held twice a month. The consultant shall be responsible for preparing meeting agendas, minutes, and presentation materials. A Critical Path Method (CPM) network, based on activities to support all project milestones and subtasks shall be prepared. The information will be in the form of a bar chart and show a deliverables schedule and other relevant data needed for the control of work, for City review of the work status and accomplishments occurring each month. The schedule will be regularly updated and provided to the Project Manager prior to the project design meeting each month.

Attachments:

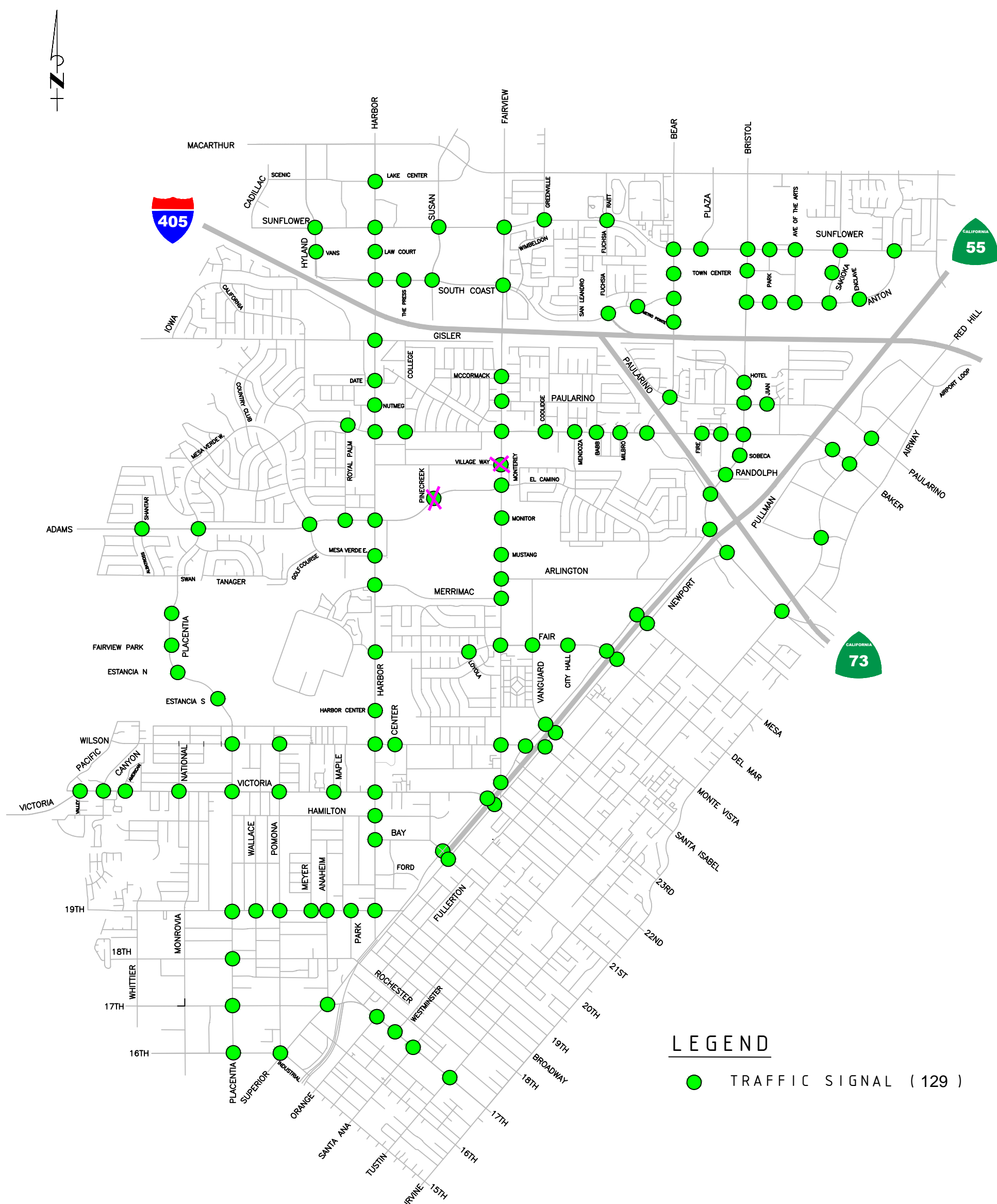
1. Exhibit A – HSIP Cycle 12 Location Map
2. Exhibit B – HSIP Cycle 12 Application Maps and Location List

# **APPENDIX A**

## **Exhibit A**

### **HSIP Cycle 12 Location Map**

## Project Locations



# **APPENDIX A**

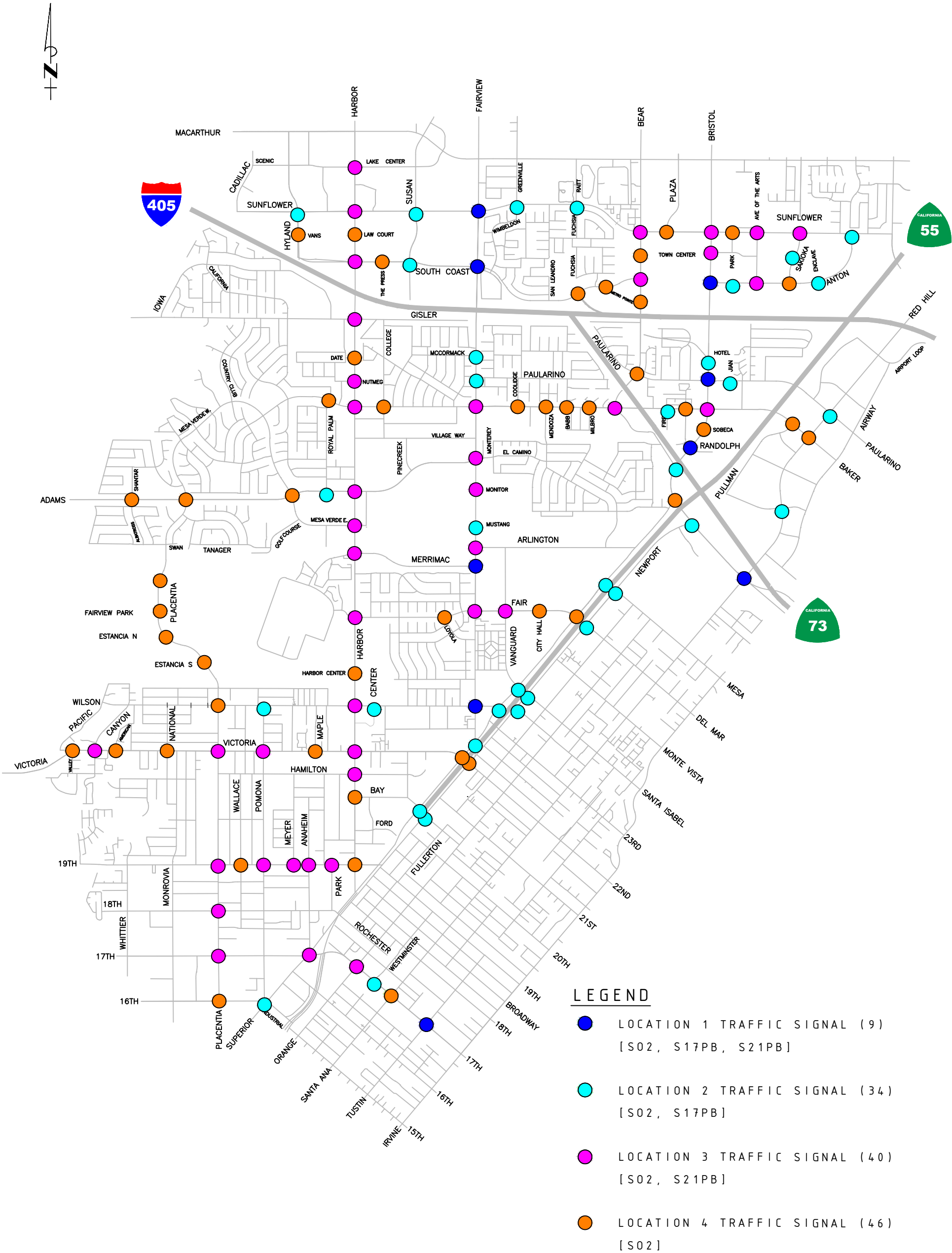
## **Exhibit B**

### **HSIP Cycle 12 Application Maps and Location List**

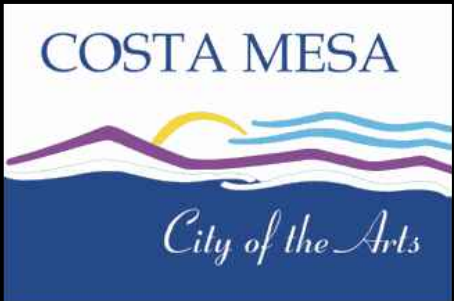


HSIP Cycle 11

Countermeasure Locations

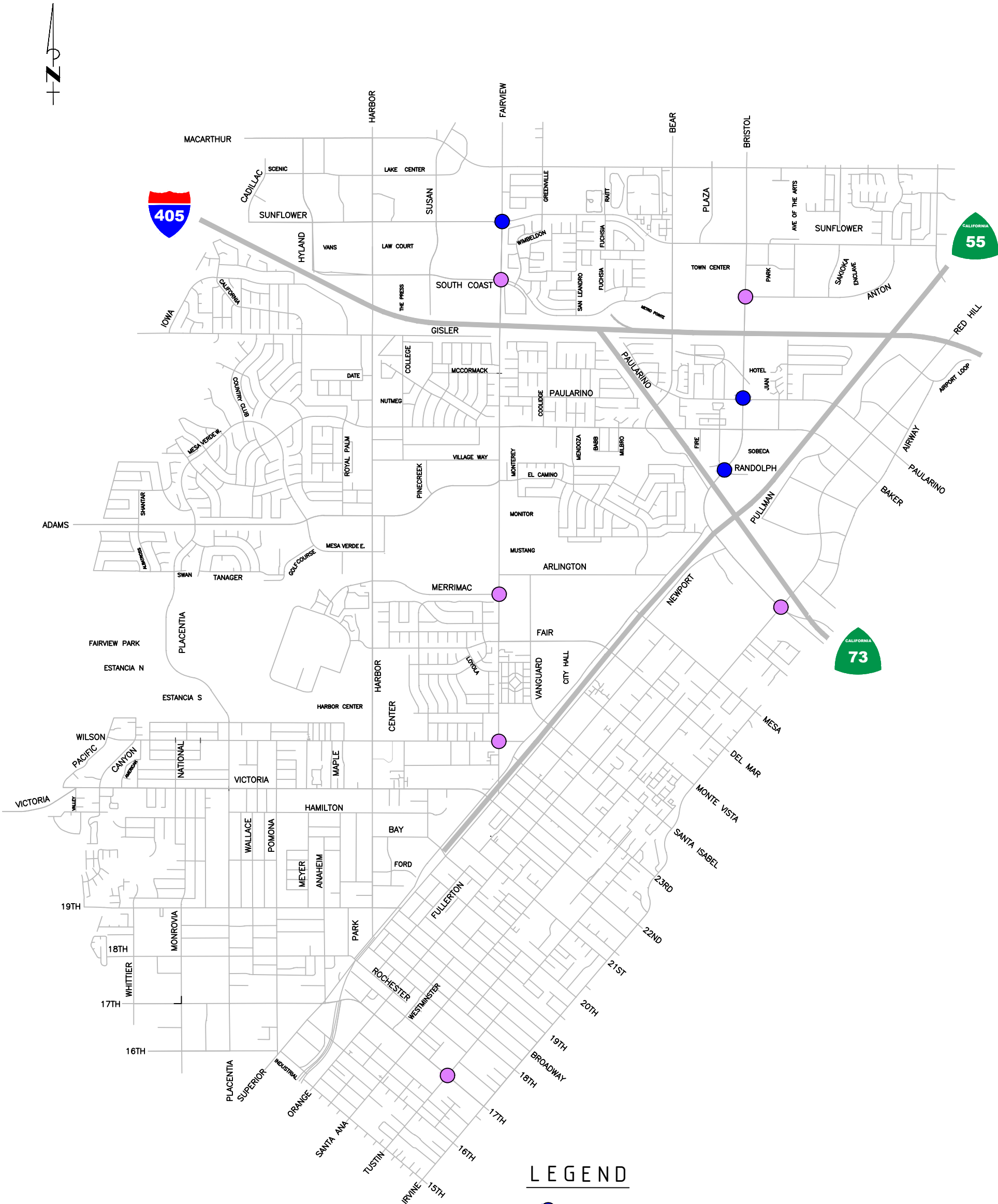


\*All improvements will be implemented in City R/W



# HSIP Cycle 11

## Location 1 Signals: Retroreflective Border Backplates (S02), Leading Pedestrian Interval (S21PB), and Countdown Pedestrian Signals (S17PB)



### LEGEND

● INSTALL RETROREFLECTIVE BORDER BACKPLATES (S02), INSTALL COUNTDOWN PEDESTRIAN SIGNAL HEADS (S17PB), AND IMPLEMENT LEADING PEDESTRIAN INTERVAL (S21PB) ( 3 )

● INSTALL RETROREFLECTIVE BORDER BACKPLATES, UPGRADE 8" SIGNAL HEADS TO 12" SIGNAL HEADS (S02), INSTALL COUNTDOWN PEDESTRIAN SIGNAL HEADS (S17PB), AND IMPLEMENT LEADING PEDESTRIAN INTERVAL (S21PB) ( 6 )

\*ALL IMPROVEMENTS WILL BE IMPLEMENTED IN CITY R/W



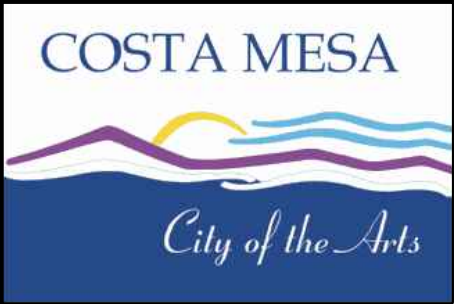
## Location 1 Example Intersection Plan (Bristol Street & Randolph Avenue)



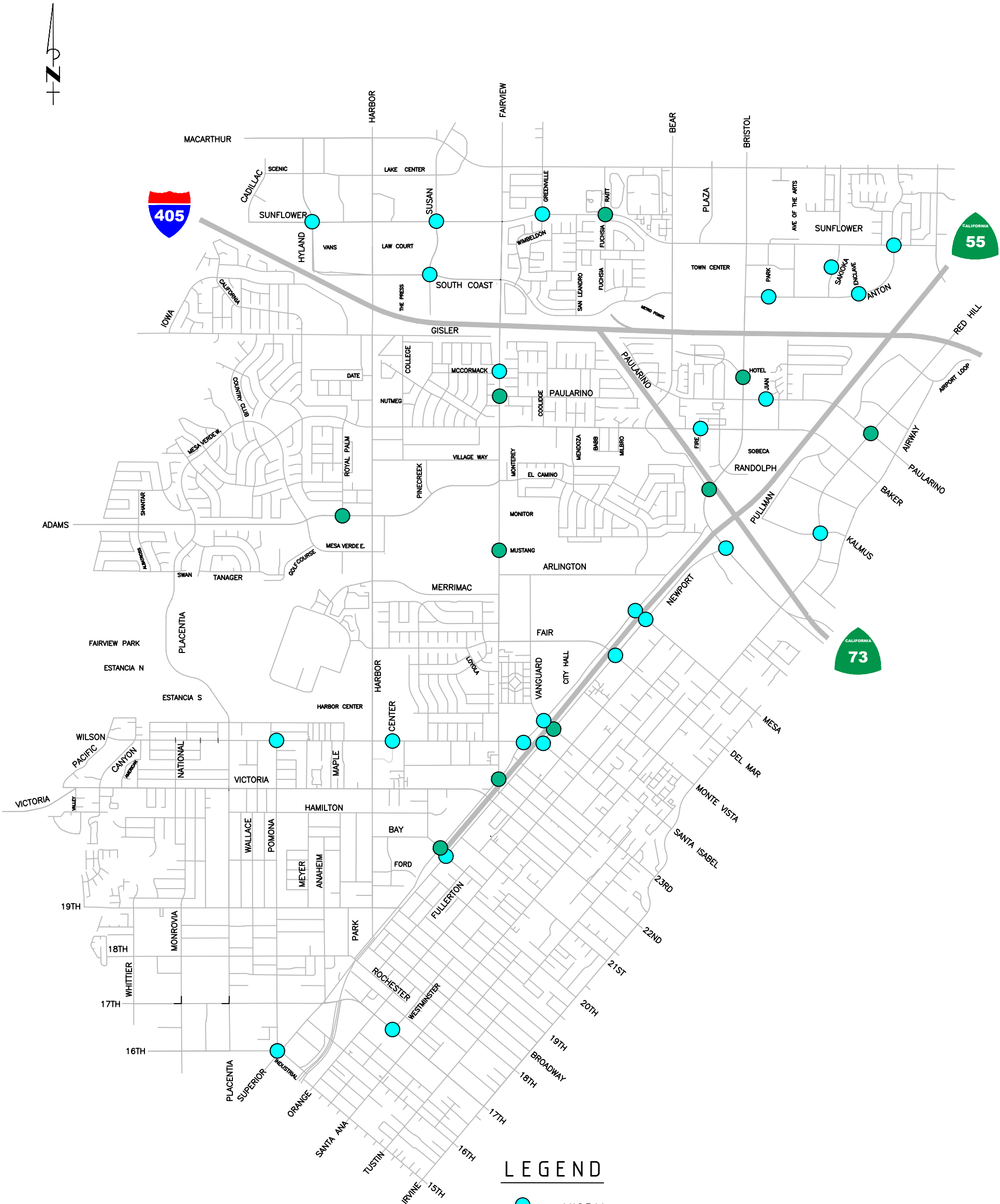
- 1 Install retroreflective border backplates on all existing signal heads (S02).

- 2 Install countdown pedestrian signal heads (S17PB) and implement a leading pedestrian interval (S21PB).





HSIP Cycle 11  
Location 2 Signals: Retroreflective  
Border Backplates & 12" Signal Head  
Upgrade (S02) and Countdown  
Pedestrian Signals (S17PB)



\*ALL IMPROVEMENTS WILL BE IMPLEMENTED IN CITY R/W



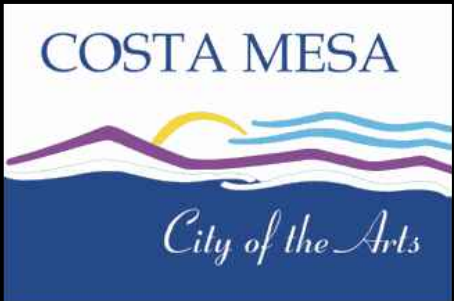
## Location 2 Example Intersection Plan (Bristol Street & Hotel Way)



- 1 Install retroreflective border backplates on all existing signal heads (S02).

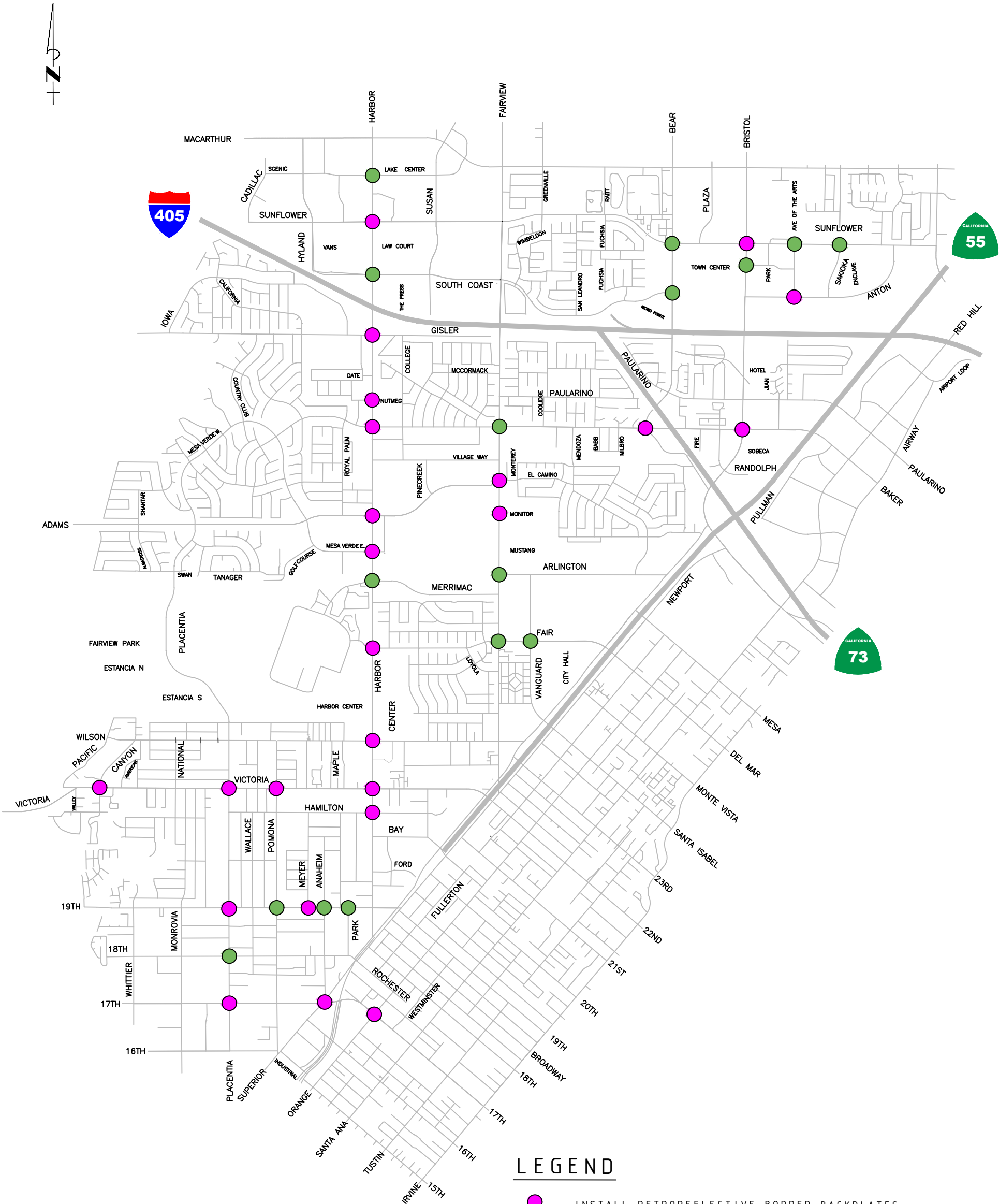
- 2 Install countdown pedestrian signal heads (S17PB).





# HSIP Cycle 11

## Location 3 Signals: Retroreflective Border Backplates & 12" Signal Head Upgrade (S02) and Leading Pedestrian Interval (S21PB)



### LEGEND

- INSTALL RETROREFLECTIVE BORDER BACKPLATES (S02), AND IMPLEMENT LEADING PEDESTRIAN INTERVAL (S21PB) ( 24 )
- INSTALL RETROREFLECTIVE BORDER BACKPLATES, UPGRADE 8" SIGNAL HEADS TO 12" SIGNAL HEADS (S02), AND IMPLEMENT LEADING PEDESTRIAN INTERVAL (S21PB) ( 16 )

\*ALL IMPROVEMENTS WILL BE IMPLEMENTED IN CITY R/W



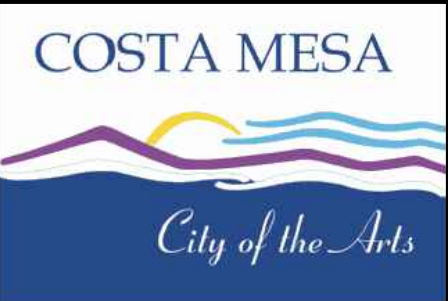
### Location 3 Example Intersection Plan (Bristol Street & Baker Street)



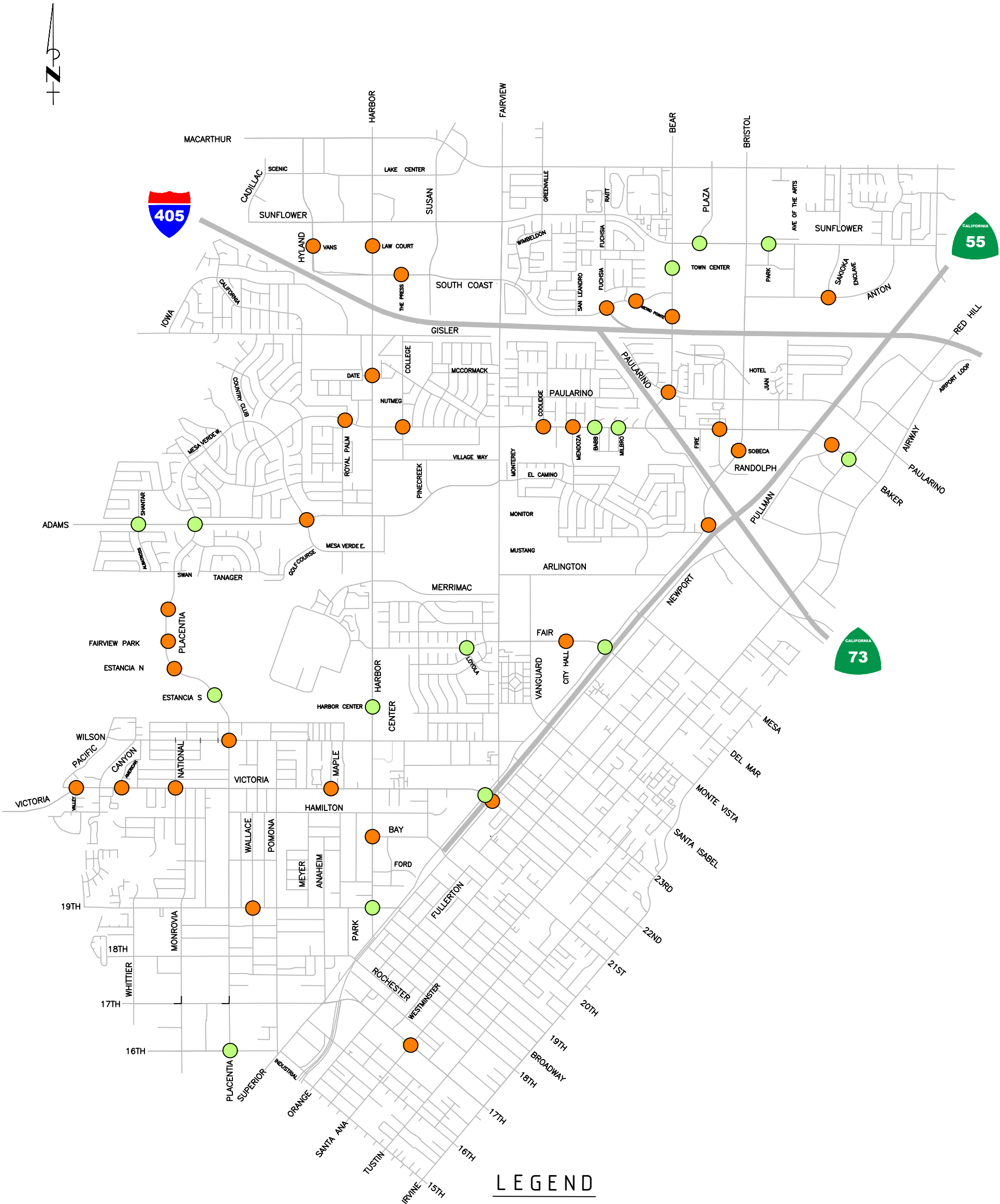
- 1 Install retroreflective border backplates on all existing signal heads (S02).

- 2 Implement a leading pedestrian interval (S21PB).





HSIP Cycle 11  
Location 4 Signals: Retroreflective  
Border Backplates & 12" Signal Head  
Upgrade (S02)



LEGEND

- INSTALL RETROREFLECTIVE BORDER BACKPLATES (S02) ( 31 )
- INSTALL RETROREFLECTIVE BORDER BACKPLATES AND  
UPGRADE 8 " SIGNAL HEADS TO 12 " SIGNAL HEADS (S02) ( 15 )

\*ALL IMPROVEMENTS WILL BE IMPLEMENTED IN CITY R/W

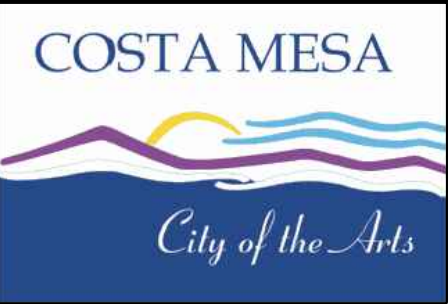


## Location 4 Example Intersection Plan (Bristol Street & Sobeca Way)



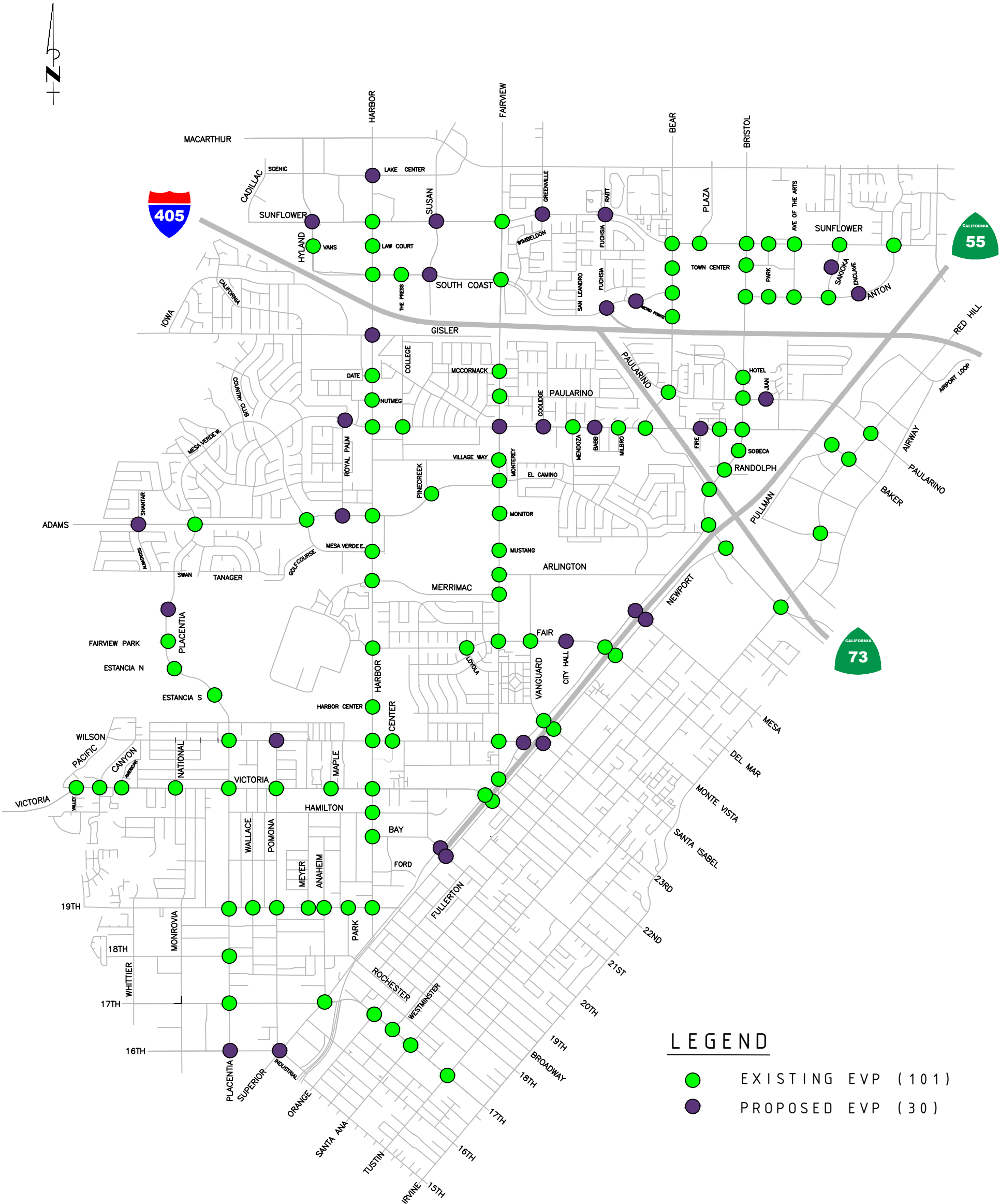
1

Install retroreflective border backplates on all existing signal heads (S02).



# HSIP Cycle 11

## Proposed Emergency Vehicle Preemption (EVP) Locations



\*All improvements will be implemented in City R/W



## Location 4 Example Intersection Plan with Supplemental EVP (Baker Street & Babb Street)



- 1 Install retroreflective border backplates on all existing signal heads (S02).

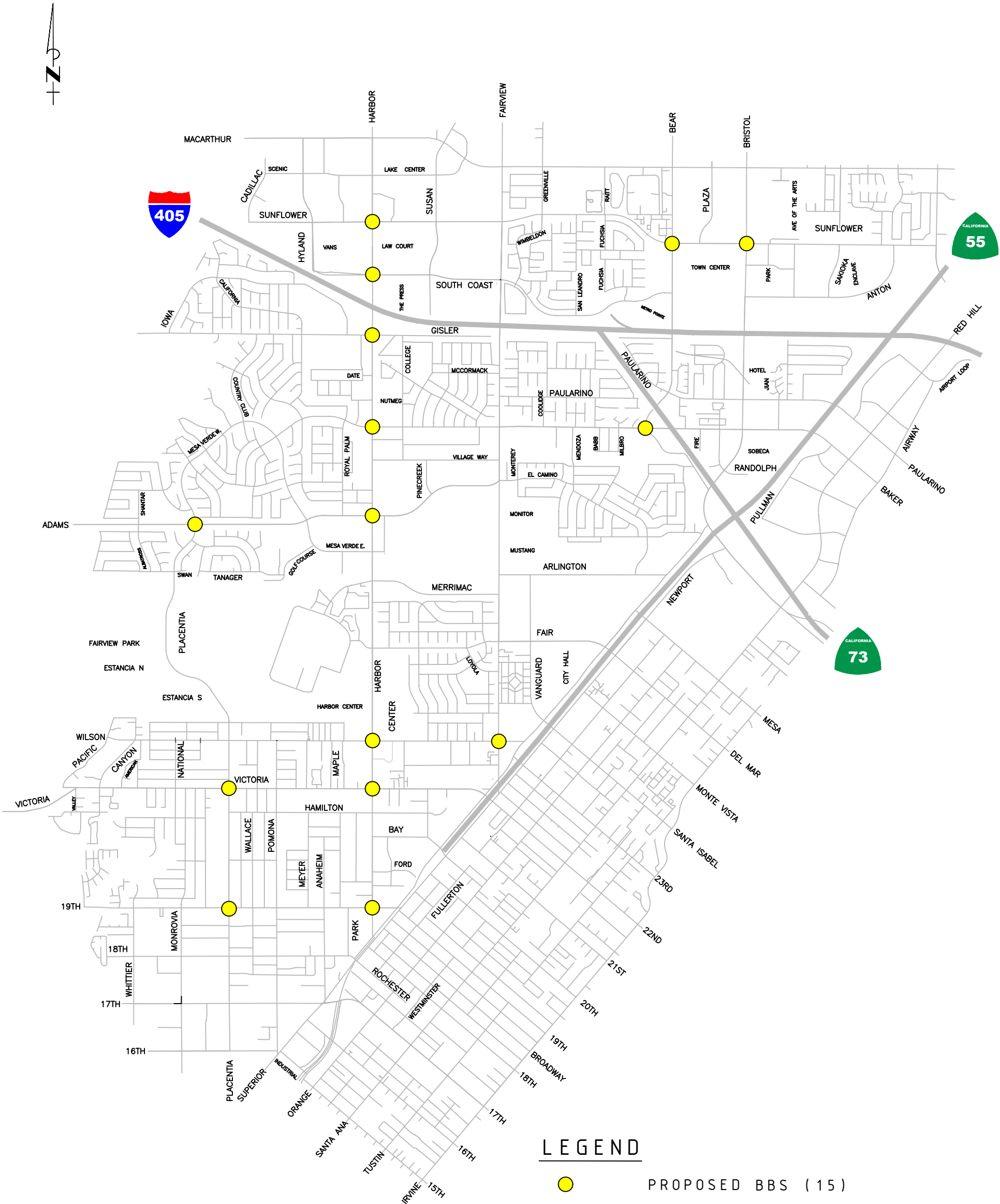
- 2 Install emergency vehicle preemption system.



HSIP Cycle 11

Proposed Battery Back-Up

System (BBS) Locations



\*All improvements will be implemented in City R/W



## Location 3 Example Intersection Plan with Supplemental BBS (Baker Street & Bear Street)



- 1 Install retroreflective border backplates on all existing signal heads (S02).

- 2 Implement a leading pedestrian interval (S21PB).



- 3 Install battery backup system.

No	Location Name		S02	S17PB	S21PB	Location Number
1	Tustin Ave	E 17th St	Y	Y	Y	1
2	Fairview Rd	W Wilson St	Y	Y	Y	1
3	Red Hill Ave	Bristol St N	Y	Y	Y	1
4	Merrimac Way	Fairview Rd	Y	Y	Y	1
5	Bristol St	Randolph Ave	Y	Y	Y	1
6	Bristol St	Paularino Ave	Y	Y	Y	1
7	Bristol St	Anton Blvd	Y	Y	Y	1
8	Fairview Rd	S Coast Dr	Y	Y	Y	1
9	S Fairview St	Sunflower Ave	Y	Y	Y	1
10	Superior Ave	W 16th St	Y	Y	N	2
11	Westminster Ave	E 17th St	Y	Y	N	2
12	Newport Blvd NB	E Bay St	Y	Y	N	2
13	Newport Blvd SB	W Bay St	Y	Y	N	2
14	Fairview Rd	Newport Blvd	Y	Y	N	2
15	Pomona Ave	W Wilson St	Y	Y	N	2
16	Newport Blvd SB	W Wilson St	Y	Y	N	2
17	Newport Blvd SB	Vanguard Way	Y	Y	N	2
18	Newport Blvd NB	Del Mar Ave	Y	Y	N	2
19	Newport Blvd NB	Mesa Dr S	Y	Y	N	2
20	Newport Blvd SB	Mesa Dr N	Y	Y	N	2
21	Fairview Rd	Mustang Way	Y	Y	N	2
22	Kalmus Dr	Red Hill Ave	Y	Y	N	2
23	Royal Palm Dr	Adams Ave	Y	Y	N	2
24	Bristol St	Bear St (flood control access)	Y	Y	N	2
25	Red Hill Ave	Paularino Ave	Y	Y	N	2
26	Fairview Rd	Paularino Ave	Y	Y	N	2
27	Bristol St	Hotel way	Y	Y	N	2
28	Fairview Rd	McCormack Ln	Y	Y	N	2
29	Park Center Dr	Anton Blvd	Y	Y	N	2
30	Susan St	S Coast Dr	Y	Y	N	2
31	Sakioka Dr	Vista Way	Y	Y	N	2
32	Anton blvd	Sunflower st	Y	Y	N	2
33	Hyland Ave	Sunflower Ave	Y	Y	N	2
34	S Susan St	Sunflower Ave	Y	Y	N	2
35	S Greenville St	Sunflower Ave	Y	Y	N	2
36	S Raitt St	Sunflower Ave	Y	Y	N	2
37	Center way	Wilson St	Y	Y	N	2
38	Newport Blvd SB	Wilson St	Y	Y	N	2
39	Newport Blvd NB	Santa Isabel Ave	Y	Y	N	2
40	Newport Blvd	SE Bristol St	Y	Y	N	2
41	Baker Fire Station 2	Baker St	Y	Y	N	2
42	Jian Way	Paularino Ave	Y	Y	N	2
43	Enclave Way	Anton Blvd	Y	Y	N	2
44	Orange Ave	E 17th St	Y	N	Y	3
45	Placentia Ave	W 17th St	Y	N	Y	3
46	Placentia Ave	W 18th St	Y	N	Y	3
47	Placentia Ave	W 19th St	Y	N	Y	3
48	Pomona Ave	W 19th St	Y	N	Y	3
49	Meyer Pl	W 19th St	Y	N	Y	3
50	Anaheim Ave	W 19th St	Y	N	Y	3
51	Park Ave	W 19th St	Y	N	Y	3
52	Harbor Blvd	Hamilton St	Y	N	Y	3
53	Canyon Dr	Victoria St	Y	N	Y	3
54	Placentia Ave	Victoria St	Y	N	Y	3

No	Location Name		S02	S17PB	S21PB	Location Number
55	Pomona Ave	Victoria St	Y	N	Y	3
56	Harbor Blvd	Victoria St	Y	N	Y	3
57	Harbor Blvd	W Wilson St	Y	N	Y	3
58	Harbor Blvd	Fair Dr	Y	N	Y	3
59	Fairview Rd	Fair Dr	Y	N	Y	3
60	Vanguard Way	Fair Dr	Y	N	Y	3
61	Harbor Blvd	Merrimac Way	Y	N	Y	3
62	Fairview Rd	Arlington Dr	Y	N	Y	3
63	Harbor Blvd	Mesa Verde Dr E	Y	N	Y	3
64	Harbor Blvd	Adams Ave	Y	N	Y	3
65	Fairview Rd	Monitor Way	Y	N	Y	3
66	Fairview Rd	el Camino Dr	Y	N	Y	3
67	Harbor Bl	Baker St	Y	N	Y	3
68	Fairview Rd	Baker St	Y	N	Y	3
69	Bear St	Baker St	Y	N	Y	3
70	Bristol St	Baker St	Y	N	Y	3
71	Nutmeg Pl	Harbor Blvd	Y	N	Y	3
72	Harbor Blvd	Gisler Ave	Y	N	Y	3
73	Bear St	South Coast Dr	Y	N	Y	3
74	Ave of the Arts	Anton Blvd	Y	N	Y	3
75	Harbor Blvd	S Coast Dr	Y	N	Y	3
76	Bristol St	Town Center Dr	Y	N	Y	3
77	Bristol St	Sunflower Ave	Y	N	Y	3
78	Ave of the Arts	Sunflower Ave	Y	N	Y	3
79	S Bear St	Sunflower Ave	Y	N	Y	3
80	Sakioka Dr	Sunflower Ave	Y	N	Y	3
81	Harbor Blvd	Sunflower Ave	Y	N	Y	3
82	Harbor Blvd	W Lake Center Dr	Y	N	Y	3
83	Superior Ave	17th St	Y	N	Y	3
84	Placentia Ave	16th St	Y	N	N	4
85	Santa Ana Ave	E 17th St	Y	N	N	4
86	Wallace Ave	W 19th St	Y	N	N	4
87	Harbor Blvd	W Bay St	Y	N	N	4
88	Valley Rd	Victoria Pl	Y	N	N	4
89	Newport Blvd NB	22nd st	Y	N	N	4
90	American Ave	Victoria St	Y	N	N	4
91	Newport Blvd SB	Victoria St	Y	N	N	4
92	National Ave	Victoria St	Y	N	N	4
93	Maple St	Victoria St	Y	N	N	4
94	Placentia Ave	W Wilson St	Y	N	N	4
95	Placentia Ave	Estancia S	Y	N	N	4
96	Placentia Ave	Fairview Park	Y	N	N	4
97	Loyola Rd	Fair Dr	Y	N	N	4
98	Newport Blvd SB	Del Mar Ave N	Y	N	N	4
99	Shantar Dr	Adams Ave	Y	N	N	4
100	Mesa Verde Dr W	Adams Ave	Y	N	N	4
101	Mesa Verde Dr E	Adams Ave	Y	N	N	4
102	Red Hill Ave	Baker St E	Y	N	N	4
103	Pullman St	Baker St E	Y	N	N	4
104	College Ave	Baker St	Y	N	N	4
105	Mendoza Dr	Baker St	Y	N	N	4
106	Royal Palm Dr	Baker St	Y	N	N	4
107	Lombard Ct	Baker St	Y	N	N	4
108	Bear St	Yukon Ave	Y	N	N	4

No	Location Name		S02	S17PB	S21PB	Location Number
109	Date Pl	Harbor Blvd	Y	N	N	4
110	Bear St	Metro Pointe E	Y	N	N	4
111	Metro Point Centre	South Coast Dr	Y	N	N	4
112	Sakioka Dr	Anton Blvd	Y	N	N	4
113	Bear St	Town Center Dr	Y	N	N	4
114	Law Court	Harbor Blvd	Y	N	N	4
115	Sunflower Ave	Plaza Dr	Y	N	N	4
116	W Stevens Ave	Sunflower Ave	Y	N	N	4
117	Babb St	Baker St	Y	N	N	4
118	Placentia Ave	Bicycle Crossing	Y	N	N	4
119	Harbor Blvd	Harbor Center	Y	N	N	4
120	Estancia N	Placentia Ave	Y	N	N	4
121	City Hall	Fair Dr	Y	N	N	4
122	Bristol St	Newport Blvd	Y	N	N	4
123	Bristol St	Sobeca Way	Y	N	N	4
124	Randolph Ave	Baker St	Y	N	N	4
125	Coolidge Ave	Baker St	Y	N	N	4
126	Hyland Ave	Vans	Y	N	N	4
127	Coast Dr	Press	Y	N	N	4
128	Metro Pointe	South Coast Dr	Y	N	N	4
129	Harbor Bl	19th St	Y	N	N	4



## APPENDIX B

*This Agreement template is for informational purposes only and is only intended for use as an example to consultants. For federal projects, the Agreement will be updated to reflect federal requirements. The City will prepare the actual PSA when a consultant is selected to perform the work.*

### CITY OF COSTA MESA PROFESSIONAL SERVICES AGREEMENT WITH

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THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and \_\_\_\_\_, a [state] [type of entity] ("Consultant").

#### WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to \_\_\_\_\_, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

#### 1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposals ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP ("Consultant's Proposal"), attached hereto as Exhibit "B," both incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement by this reference (the "Fee

Schedule"). Consultant's total compensation shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of \_\_\_\_\_ months, ending on \_\_\_\_\_, 20\_\_\_\_, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. [Optional extension language: This Agreement may be extended by [ ] additional [ ] year periods upon mutual written agreement of both parties.]

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of

termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

- (d) Professional errors and omissions (“E&O”) liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects’ and engineers’ coverage shall be endorsed to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.”
- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be

held responsible for payments of damages to persons or property.

## 6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Attn: \_\_\_\_\_

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-  
Attn: \_\_\_\_\_

Courtesy copy to:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions

contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to



Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation

and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.22. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.24. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.25. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. 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. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.27. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this

Agreement.

[Signatures appear on following page.]

SAMPLE

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONSULTANT**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
[Name and Title]

**CITY OF COSTA MESA**

\_\_\_\_\_  
[Name]  
[Mayor or City Manager]

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

ATTEST:

\_\_\_\_\_  
Brenda Green  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

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

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Ruth Wang  
Risk Management

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
[Name]  
Project Manager

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

DEPARTMENTAL APPROVAL:

\_\_\_\_\_  
[Name]  
[Title]

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

APPROVED AS TO PURCHASING:

\_\_\_\_\_  
Carol Molina  
Finance Director

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

SAMPLE

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**

SAMPLE

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

SAMPLE

**EXHIBIT C**  
**FEE SCHEDULE**

SAMPLE



**EXHIBIT D**  
**PROJECT SCHEDULE**

SAMPLE

**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

SAMPLE

## CITY OF COSTA MESA, CALIFORNIA

### COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

#### BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

#### PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

#### POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
  - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
  - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
  - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

## INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days

after written notice is given to City.”

- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A :	
INSURED	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

ANY PERSON OR ORGRANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR  
AGREEMENT TO OBTAIN THIS WAIVER OF RIGHTS FROM US.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

### SCHEDULE

#### PERSON OR ORGANIZATION

ANY PERSON OR ORGANIZATION FOR WHOM THE  
NAMED INSURED HAS AGREED BY WRITTEN  
CONTRACT TO FURNISH THIS WAIVER

#### JOB DESCRIPTION

BLANKET WAIVER OF SUBROGATION

SAMPLE

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: ZZ/ZZ/2014

Policy No. GPVGT"

Endorsement No. 001

Insured: Contractors Name

Premium \$ INCL.

Insurance Company: Insurance Company

Countersigned By: \_\_\_\_\_

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note. ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup>  The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

**\*Note.** Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



**Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE**

(For Local Assistance Federal-Aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS AGREEMENT LANGUAGE IS RECOMMENDED LANGUAGE, EXCEPT ARTICLE XXXII TITLE VI ASSURANCES (APPENDICES A AND E MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT AND APPENDICES B-D MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT INVOLVING RIGHT OF WAY ACQUISITION). MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

THIS EXHIBIT CONTAINS FISCAL REQUIREMENTS FROM 2 CFR 200 AND IS TO BE USED FOR STATE-ONLY FUNDED CONTRACTS AS WELL.

*[Note: italic text within brackets throughout the Articles is intended for instructional purposes only]*

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**ARTICLE I INTRODUCTION**

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

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

*[Choose either Option 1 or Option 2]*

*[Option 1 - Use paragraphs A & B below for standard AGREEMENTs]*

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

*[Option 2 - Use paragraphs A & B below for on-call AGREEMENTs]*

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

## ARTICLE III STATEMENT OF WORK

*[Insert Appropriate Statement of work including a Description of the Deliverables in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."]*

- A. CONSULTANT Services  
*[Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent*

*uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.*

*Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see [LAPM Chapter 6: Environmental Procedures](#), and the Standard Environmental Reference).]*

B. Right of Way

*[State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.]*

C. Surveys

*[State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.]*

D. Subsurface Investigations

*[State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.]*

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

*[For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.]*

H. CONSULTANT Services During Construction

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

I. Documentation and Schedules

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

**J. Deliverables and Number of Copies**

The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.

**ARTICLE IV PERFORMANCE PERIOD**

*[A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.]*

A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

*[Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTs. On-call AGREEMENTs shall be 5 years maximum.]*

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

*[Choose either Option 1, 2, 3, or 4]*

*[Option 1 - Use paragraphs A through K below for Cost-Plus-Fixed Fee AGREEMENTs]*

A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.

- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

*[Option 2 - For Cost per Unit of Work AGREEMENTs, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project].*

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in

Article III Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.

- C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

*[Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements (such as on-call Agreements). This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTs or components of AGREEMENTs for specialized or support type services where the CONSULTANT is not in direct control of the number of hours worked, such as construction engineering and inspection.]*

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



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

F. *[Local Agency to include either (a) or (b) below; delete the other one]*

- (a) Reimbursement for transportation and subsistence costs shall not exceed State rates.
- (b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

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

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

*[Option 4 - Use paragraphs A through E below for lump sum agreements.]*

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- E. The total amount payable by LOCAL AGENCY shall not exceed \$ (Amount).

## **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

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

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

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

**ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
  - 1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
  4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

## ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

*[Choose either Method 1, Method 2, or Method 3 below and delete the other two.]*

**Method 1:** No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

**Method 2:** No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

**Method 3:** The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

#### **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

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

**ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.



- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
  3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
  5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
  2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

#### G. Hours of Labor

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

## H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTs and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

## ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. 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.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

## ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

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

*[Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.]*

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

**ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2

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

- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

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

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is \_\_\_\_\_%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

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

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and [Replacement](#) of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or [replace](#) a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form.

[Termination of DBE Subconsultants](#)

[After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:](#)

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.

6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal



- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
  - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
  - Solicitations of DBEs for performance of work identified
  - Correspondence with interested DBEs that may have included contract details and requirements
  - Negotiation efforts with DBEs that reflect why an agreement was not reached
  - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
  - Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
  - Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

#### F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

#### G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY

these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work

of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## ARTICLE XIX INSURANCE

*[Choose either Option 1 or Option 2]*

*[Option 1 - for AGREEMENT with a scope of services that may require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations.]*

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
  - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
  - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

*[Option 2 - for AGREEMENTs with a scope of services that will not require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way where there would be exposure to public traffic or construction CONSULTANT operations.]*

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

## **ARTICLE XX FUNDING REQUIREMENTS**

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

## **ARTICLE XXI CHANGE IN TERMS**

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

## **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing

business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## ARTICLE XXIII DISPUTES

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

*[Choose either Option 1 or Option 2]*

*[Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal]*

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

*[Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E]*

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

## ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

## ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

*[Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper]*

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

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

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

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY.

Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

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

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

*[For PS&E contracts add paragraph F, below, to paragraphs A through E, above]*

- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

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

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



**ARTICLE XXX EVALUATION OF CONSULTANT**

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

**ARTICLE XXXI PROMPT PAYMENT****A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

**B. PROMPT PAYMENT CERTIFICATION**

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

**ARTICLE XXXII TITLE VI ASSURANCES****APPENDICES A - E of the TITLE VI ASSURANCES**

*[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.]*

*The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.*

*The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:*

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

## APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

### **APPENDIX C**

#### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

### **APPENDIX D**

#### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on,

over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of

public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

### ARTICLE XXXIII NOTIFICATION

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

CONSULTANT:

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

LOCAL AGENCY:

\_\_\_\_\_  
(LOCAL AGENCY)  
\_\_\_\_\_  
(NAME) \_\_\_\_\_, Contract Administrator  
\_\_\_\_\_  
(ADDRESS)  
\_\_\_\_\_  
\_\_\_\_\_

### ARTICLE XXXIV CONTRACT

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

**ARTICLE XXXV SIGNATURES**

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

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

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

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

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

**APPENDIX C  
FORMS**

**Vendor Application Form  
Ex Parte Communications Certification  
Disclosure of Government Positions  
Disqualification Questionnaire  
Company Profile & References  
Bidder/Applicant/Contractor Campaign Contribution**





**VENDOR APPLICATION FORM  
FOR  
RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS  
(FEDERAL PROJECT NO. HSIPL-5312(107))**

TYPE OF APPLICANT: ☐ NEW ☐ CURRENT VENDOR

Legal Contractual Name of Corporation: \_\_\_\_\_

Contact Person for Agreement: \_\_\_\_\_

Title: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Corporate Mailing Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Contact Person for Proposals: \_\_\_\_\_

Title: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Is your business: (check one)

☐ NON PROFIT CORPORATION ☐ FOR PROFIT CORPORATION

Is your business: (check one)

☐ CORPORATION ☐ LIMITED LIABILITY PARTNERSHIP  
☐ INDIVIDUAL ☐ SOLE PROPRIETORSHIP  
☐ PARTNERSHIP ☐ UNINCORPORATED ASSOCIATION

**Names & Titles of Corporate Board Members**

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Federal Tax Identification Number: \_\_\_\_\_

City of Costa Mesa Business License Number: \_\_\_\_\_

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: \_\_\_\_\_

## EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning informal **RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107))** at any time after August 27, 2024.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Print

OR

I certify that Proposer or Proposer's representatives have communicated after August 27, 2024 with a City Councilmember concerning informal **RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107))**. A copy of all such communications is attached to this form for public distribution.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Print

## **DISQUALIFICATION QUESTIONNAIRE**

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

### **DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of Contractor currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

## **COMPANY PROFILE & REFERENCES**

### **Company Legal Name:**

Company Legal Status (corporation, partnership, sole proprietor etc.):

Active licenses issued by the California State Contractor's License Board:

Business Address:

Website Address:

Telephone Number:

Facsimile Number:

Email Address:

Length of time the firm has been in business:

Length of time at current location:

Is your firm a sole proprietorship doing business under a different name: \_\_\_\_Yes \_\_\_\_No

If yes, please indicate sole proprietor's name and the name you are doing business under:

Federal Taxpayer ID Number:

Regular Business Hours:

Regular holidays and hours when business is closed:

### **Contact person in reference to this solicitation:**

Telephone Number:

Facsimile Number:

Email Address:

### **Contact person for accounts payable:**

Telephone Number:

Facsimile Number:

Email Address:

### **Name of Project Manager:**

Telephone Number:

Facsimile Number:

Email Address:

## **COMPANY PROFILE & REFERENCES (Continued)**

Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least three clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

### **Company Name:**

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

### **Company Name:**

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

### **Company Name:**

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

### **Company Name:**

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:

### **Company Name:**

Telephone Number:

Contact Name:

Contract Amount:

Email:

Address:

Brief Contract Description:



**BIDDER/APPLICANT/CONTRACTOR CAMPAIGN CONTRIBUTION  
DISCLOSURE FORM**

Proposer/Consultant/Applicant is required to identify any campaign contribution or cumulative contributions greater than \$249 to any city council member in the twelve months prior to submitting an application, proposal, statement of qualifications or bid requiring approval by the City Council.

Date	Name of Donor	Company/Business Affiliation	Name of Recipient	Amount

Except as described above, I/we have not made any campaign contribution in the amount of \$250 or more to any Costa Mesa City Council Member in the twelve months preceding this Application/Proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Bidder/Applicant/Proposer

\_\_\_\_\_  
Date



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

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 20.00%

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

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

**2. AUTHORITY AND RESPONSIBILITY**

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

**3. SUBMISSION OF DBE INFORMATION**

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

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

**4. DBE PARTICIPATION GENERAL INFORMATION**

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

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

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

## 5. RESOURCES

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

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

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

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

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

# 1. COVER LETTER

September 19, 2024  
Costa Mesa City Hall  
77 Fair Drive  
Costa Mesa, CA 92626

» 1100 W Town & Country Road  
Suite 700  
Orange, CA 92868  
TEL 714.939.1030

## RE: PROPOSAL FOR SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107)) – RFP No. 25-04

Dear Members of the Selection Committee:

The **City of Costa Mesa** (City) is seeking a trusted and knowledgeable consultant to prepare plans, specifications, and estimates (PS&E) for implementation of traffic safety enhancements at 129 intersections throughout the City. To successfully deliver this project, the City will benefit most from a consultant who is already familiar with the project, has a proven track record with similar initiatives, and offers a cohesive and skilled team. **Kimley-Horn is that consultant.** We have thoroughly reviewed and understand all aspects of this Request for Proposal (RFP) and are prepared to offer the following advantages:

**Pre-Existing Knowledge.** Kimley-Horn has a deep understanding of the project due to our previous work preparing the City's corresponding Highway Safety Improvement Program (HSIP) application and developing your Local Roadway Safety Plan (LRSP). As such, we are already well-acquainted with the City's vision for the anticipated signal improvements at each intersection. Our familiarity with the City's expectations and standards means there will be no learning curve. **With Kimley-Horn, you can expect us to hit the ground running, saving you valuable time.**

**Extensive Caltrans and HSIP Experience.** Kimley-Horn has completed numerous Caltrans HSIP projects, ranging from single intersections to multiple intersection corridors. We understand that familiarity with the coordination of the approval process is key to the timely completion of these projects. Additionally, Kimley-Horn has a successful track record of completing HSIP and traffic projects for clients in District 12, including the following:

- City of Maywood, Traffic Signal Improvements at 12 Intersections, HSIP Cycle 11
- City of Pico Rivera, Traffic Improvements at 47 intersections, HSIP Cycle 11
- City of Downey, Paramount Boulevard Traffic Signal Upgrade and Fiber-Optic Communication System
- City of West Covina, Preliminary Engineering Phase Services, HSIP Cycle 10 Improvements
- City of Santa Clarita, Wiley Canyon Road at Orchard Village Road and Newhall Avenue at Railroad Avenue Intersection Improvement

- City of Norwalk, Final Design Services for Traffic Signal Improvements Along Studebaker Road
- City of Norwalk, Design Services for Traffic Signal Improvements Along Alondra Boulevard

**A Tailor-Made Team.** As project manager, **Jean Fares, PE** will lead our team and be responsible for providing the scope of services listed in the RFP. Jean brings over 35 years of experience in the transportation engineering field and has worked closely with numerous local municipalities on various traffic signal modification projects. Jean will be supported by a skilled team of engineers, planners, and analysts with experience in traffic signal plans, traffic signal timing, bidding/construction support, and more. We have supplemented our in-house team with trusted subconsultants **Avant-Garde** (Environmental and Caltrans LAPM), **LIN Consulting** (Traffic Signal support) and **AET** (Traffic Signal and Timing Sheet support). Our proposed project team regularly works together on similar HSIP projects, allowing us to collaborate with the City efficiently and effectively while completing all tasks under this contract on time and within budget. Our partners will bring the institutional knowledge necessary to seamlessly incorporate recent project improvements at the City to avoid duplicate and conflicting work. This coordination is necessary to maintain efficiency for the project timeline.

Thank you for considering our proposal. Kimley-Horn is confident that no other consultant matches our qualifications and the unique knowledge of the City that we bring. We look forward to the opportunity to work on this project. Should you have any questions related to our proposal, please contact project manager **Jean Fares, PE** directly at [jean.fares@kimley-horn.com](mailto:jean.fares@kimley-horn.com), 818.970.2048, or at the address listed above.

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**



Jean Fares, PE\*

Project Manager/Senior Vice President

\*Jean Fares is authorized by Kimley-Horn to bind the firm to the terms of the proposal.

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## 2. BACKGROUND AND PROJECT SUMMARY SECTION

### Understanding of the City, Project, and Objectives

The City of Costa Mesa (City) is looking to improve safety and operability through the installation of retroreflective signal heads, 12" vehicle heads, pedestrian countdown signal heads, and Leading Pedestrian Interval (LPI) timing at 129 existing signalized intersections in various locations throughout the City. The City is also looking to install high-visibility pedestrian crossings at certain intersections. Per the City's RFP, the project will be funded at 90%, with HSIP funding for 129 total intersections.

The City has compiled collision data history from 2015 to 2019; of the total 1,545 collisions, 149 included pedestrians and cyclists.

The Caltrans LRSM outlines a systemic approach of proven safety countermeasures to address systemwide safety issues. The LRSM provides steps to calculate Benefit to Cost ratios (BCR) to determine which low-cost countermeasures could be implemented to high crash locations. Based on the collision data history and BCRs, the City has determined three countermeasures to increase safety and reduce the number of collisions.

The first countermeasure, **S2: Improve Signal Hardware: Lenses, Back-Plates with Retroreflective Borders, Mounting Size, and Number of Signal Heads**, consists of improvements in safety for signalized intersections by installing new LED lighting, signal back plates, retro reflective tape outline on the back plates, or visors to increase signal visibility, larger signal heads, relocation of signal heads, or additional signal heads. The LRSM states that the S2 countermeasure provides better daytime and nighttime visibility and clarity of signals and also reduces rear-end and right-angle collisions associated with drivers who are unable to see traffic signals sufficiently in advance of an intersection. Upgrading all vehicle head lenses to 12" LED vehicle heads and all back-plates with retroreflective borders and mountings has the potential to reduce crashes by 15 percent, as documented in the LRSM and RFP.

The second countermeasure, **S17PB: Install Pedestrian Countdown Signal Heads**, focuses on improving safety for pedestrians by installing a timer display to let pedestrians know how much time they have left to safely cross a street. The implementation of pedestrian countdown signal heads will reduce crashes by 25 percent, as documented in the LRSM and RFP.

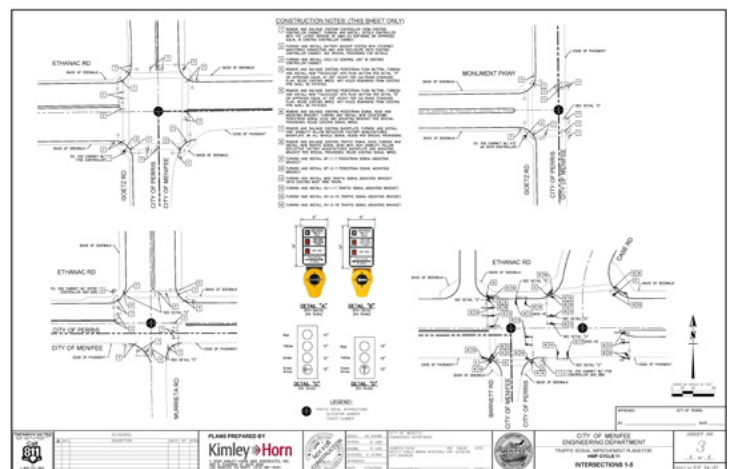
The third countermeasure, **S21PB: Modify Signal Phasing to Implement a LPI**, allows pedestrians a head start to cross the crosswalk, increases visibility for drivers completing a turning movement, allows pedestrians to have the right-of-way, and reduces conflict between pedestrians and vehicles. The LPI will reduce collisions by 59 percent, as documented in the LRSM.

Countermeasures S2, S17PB, and S21PB will have a combined BCR of 39.24. The implementation of these countermeasures is an effective method to improve overall intersection safety through enhancements to visibility. Specific improvements are further discussed in **Section 3.2**.

Grant administration is a key element to confirm that the City follows through with procurement. When agencies are appropriated funding, it is their responsibility to work with the administering agencies to submit required documents and reimbursements requests. Funding administration involves various steps, such as tracking eligible and non-eligible expenditures through a project's lifespan, providing guidance on programmatic changes and updates, and building relationships with each agency granting or administering the funding. Kimley-Horn is thoroughly familiar with the processes pursuant to Caltrans LAPM funding administration procedures.

In addition to the design and integration of this project, Kimley-Horn understands the importance of coordination with Caltrans District 12 for successful implementation. Our team will verify that our submittals are complete to meet Caltrans LAPM requirements for each submission. It is further understood that the project is funded by federal funds and is subject to the state's process for federally funded HSIPs.

We have included one project sample for the City of Maywood on the right, which provided enough context for the design and conveyed the information to the contractors. We drew the existing right-of-way, curb, and centerlines as a base for the design and upgraded vehicle heads and installed retroreflective backplates, APS, controllers, BBS, and countdown pedestrian signals.

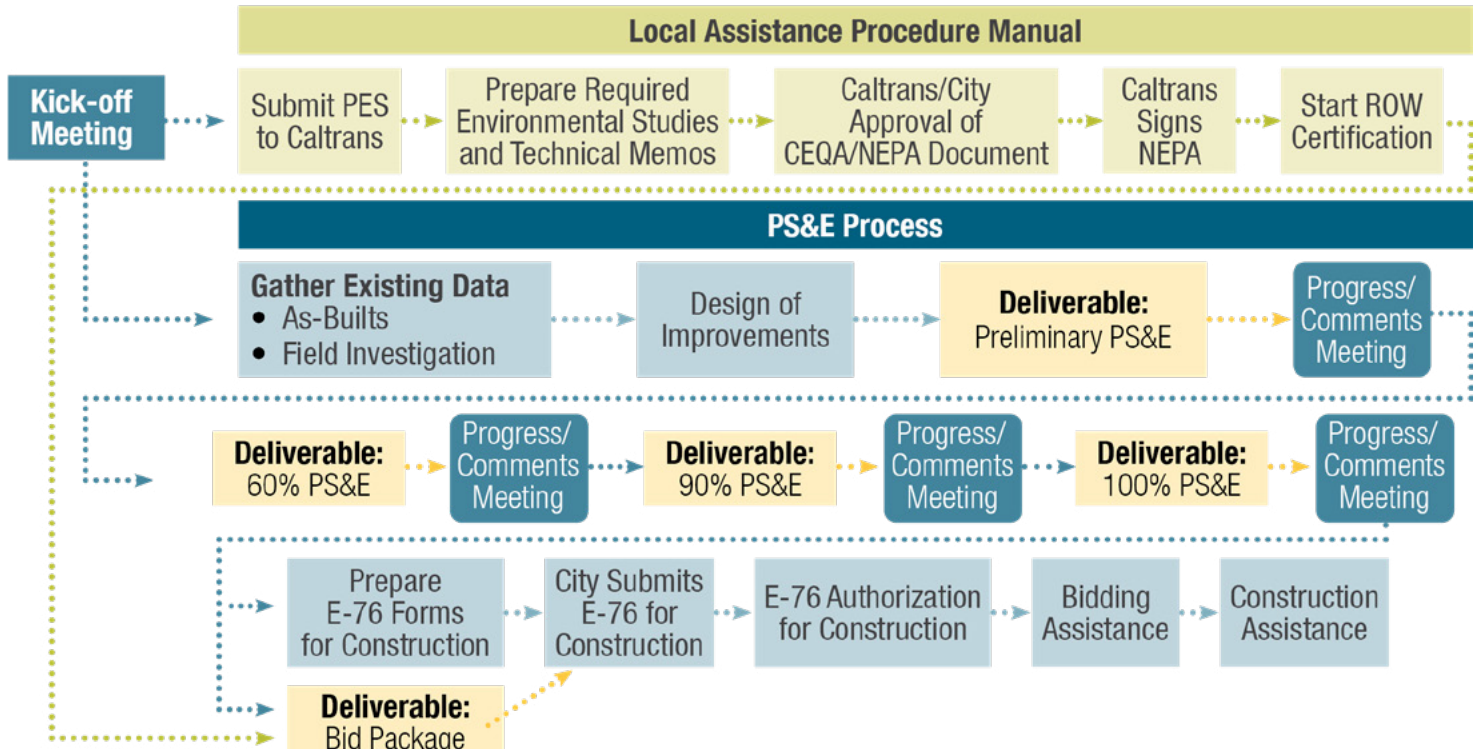




## 3. PROJECT APPROACH AND METHODOLOGY

### 3.1 Understanding of the Project

The scope of the project encompasses several key phases, beginning with a detailed inventory of the existing traffic signals. This inventory will inform the preliminary design, which will be followed by environmental approval to meet CEQA/NEPA requirements. The final phase involves developing comprehensive (PS&E) for construction. This modernization effort aims to improve visibility, compliance, and safety for all road users, aligning with both state and federal standards. The City has set a 120-day completion timeline for this project, which also includes specific requirements for Disadvantaged Business Enterprise (DBE) participation and adherence to federal-aid provisions.



### 3.2 Detailed Description of Efforts

#### Phase 1: Detailed Citywide Traffic Signal Inventory

The Kimley-Horn team will attend a pre-design (kick-off) meeting with City staff after the award of contract to conduct introductions, discuss scope of work, go over the HSIP application and other information needed from various City departments, overall schedule, and the implementation process.

Our team will conduct field investigations at each of the intersections to document locations of pedestrian signal heads without countdown capabilities, locations of 8" signal heads at the intersections, brand/manufacturer, type (3-section, 4-section, etc.) and condition of each signal head, including whether it needs maintenance. It is assumed that the brand/manufacturer is written clearly on existing vehicle heads. It is also assumed that the determination of vehicle head maintenance will be for vehicle heads that have extremely faded backplates, bent backplates, or dull bulbs.

Cabinet inventory will take place to determine existing controllers at each of the intersections and conduit sizes coming into each controller cabinet.



We will open the pull boxes at up to 30 intersections where proposed EVP equipment will be installed. Conduit fill calculations will be performed to verify if existing conduits have adequate space for the additional EVP cable. It is assumed that pull boxes only labeled “Traffic Signal” will be opened. Any inaccessible pull boxes (e.g., damaged or screwed shut lids, inaccessible on sidewalk or median, requiring unreasonable force to open, etc.) will be documented. Field data of the existing conditions of vehicle heads, pedestrian heads, signal controllers, and conduit fill will be compiled in a detailed table using Microsoft Excel.

For the City of Menifee, we conducted field investigations that showed locations of signal heads, pedestrian countdown/non-countdown, and signal equipment. The image on the previous page shows an example of these field notes and photos taken to show all signal heads in each direction for reference.

#### Phase 1 Deliverables:

- Attendance at project kick-off meeting
- Field Notes in PDF format
- Field Data Table in Excel format

#### Phase 2: Preliminary Design

Kimley-Horn will review base data documents, including as-built improvement plans, utility information, survey information, and other available record data. Kimley-Horn will refine the field data table created in Phase 1 to include proposed improvements such as BBS and EVP and remain consistent with the HSIP grant application to create the Traffic Signal Inventory Table of Proposed Improvements.

We will prepare preliminary engineering plans for the following four scenarios:

1. Location 1: Countermeasures S02, S17PB, and S21PB
2. Location 2: Countermeasures S02, S17PB
3. Location 3: Countermeasures S02, S21PB
4. Location 4: Countermeasure S02

The preliminary engineering plans for the scenarios above will include traffic signal upgrades necessary for the upgraded traffic signal operations, such as retroreflective backplates, replacing 8” vehicle heads, countdown pedestrian heads, LPI, BBS, and EVP. These plans will be an example for the 129 intersection plans that will be developed in Phase 4. The design will be in compliance with the latest editions of the California Manual on Uniform Traffic Control Devices (CA MUTCD), state and federal standards, and City of Costa Mesa standards.

It is assumed there will be one virtual meeting to discuss the preliminary design.

#### Phase 2 Deliverables:

- Attendance at one virtual meeting
- Traffic Signal Inventory Table of Proposed Improvements in .xlsx format
- Preliminary Design Plans (4 sheets) in PDF format

#### Phase 3: Environmental Approval

##### ► Phase 3.1 CEQA Categorical Exemption

The project requires compliance with the California Environmental Quality Act (CEQA). The City is expected to act as the Lead Agency under CEQA. It is assumed that a Categorical Exemption (CE) would be the appropriate level of CEQA documentation.

Based on the information provided, the Kimley-Horn team assumes that the project will be covered under CEQA Guidelines Section 15301, which allows a CE for projects that have been determined not to have a significant effect on the environment. The Kimley-Horn team will prepare the State Clearinghouse (SCH) Notice of Exemption (NOE) Form, along with a memorandum which summarizes and documents how the City will meet its Lead Agency responsibilities under CEQA. The memorandum will include responses to topic areas specified in CEQA Guidelines Section 15300.2 that would negate the exemption by an exception. Once these documents have been approved by the City, the Kimley-Horn team will file the NOE Form with the County Clerk’s Office and the SCH. If it is ultimately determined that the project would be exempt under SB 922, the Kimley-Horn team will also file the NOE Form with the County Clerk and SCH as required.

##### ► Phase 3.2 NEPA Categorical Exclusion

Environmental documentation pursuant to the National Environmental Policy Act (NEPA) is required and Caltrans would be the NEPA Lead Agency. The project would be processed through Caltrans’ Local Assistance Program. The Kimley-Horn team assumes that the project would be categorically excluded under the provisions of NEPA; technical studies would be required to support this determination.

### ► Phase 3.3 Technical Studies in Support of CEQA/NEPA Documentation: Preliminary Environmental Study (PES) and Caltrans Checklist

The Kimley-Horn team will initiate the Caltrans environmental review process through completion of the Preliminary Environmental Study (PES), a Caltrans checklist that helps with identifying the appropriate level of environmental review. The PES will also identify federal, state and local agencies from which discretionary approval actions or permits would be required, identify efforts to comply with NEPA, and identify the anticipated NEPA pathway and rationale. After approval of the PES by the City and Caltrans, the Kimley-Horn team will prepare the required technical studies. Based on preliminary research, technical studies related to cultural resources are anticipated, and are included in this scope of work. Technical studies required for NEPA approval would be completed in accordance with the Caltrans' Standard Environmental Reference (SER) guidelines and Local Assistance Procedures Manual (LAPM).

The PES Form will be completed pursuant to Caltrans' SER and LAPM. The Kimley-Horn team will submit the Draft PES to the City for review and approval. Once the Draft PES has been approved by the City, the Kimley-Horn team will finalize the revisions, submit the PES to Caltrans. Once comments are received, the Kimley-Horn team will revise the PES and resubmit the Final PES to Caltrans. The Kimley-Horn team will complete a desktop review and complete the PES Form.

The Kimley-Horn team will respond to one round of consolidated comments from the City and Caltrans for each form and technical report. It is assumed there will be one virtual meeting to discuss the environmental documentation.

#### Phase 3 Deliverables:

- Attendance at one virtual meeting
- One electronic copy of the Draft and Final NOE Form and CE Memorandum
- One electronic copy of the Draft and Final PES

### Phase 4: Final Design Plans, Specifications, and Estimates (PS&E)

#### ► Task 4.1: 60% Plans and Estimate Package

Based on receiving the Categorical Exemption/Categorical Exclusion, Kimley-Horn will advance the construction documents to a 60% level of design. Kimley-Horn will adjust the design plans based on City comments from the preliminary design and incorporate proposed elements from the field data table.

Additional annotation will be added to the traffic signal plans based on the comments received by the City.

An engineer's Opinion of Probable Construction Cost (OPCC) will be developed in Microsoft Excel. A project contingency will be added the OPCC to provide for cost increases and unknown issues that may arise but cannot be specifically identified at this stage.

Because Kimley-Horn has no control over the cost of labor, materials, equipment or services furnished by others, over methods of determining price, or over competitive bidding or market conditions, Kimley-Horn does not guarantee that proposals, bids, or actual costs will not vary from the opinion on costs.

Plans will be completed in AutoCAD Version 2024 and will be presented with four intersections per plan sheet at scale 1"=40'.

We anticipate the following plan sheet counts for the project:

- Title Sheet: 1 sheet
- Index Map with Traffic Signal Inventory Table of Proposed Improvements: 1 sheet
- General Notes and Project Specific Notes: 1 sheet
- Traffic Signal Improvement Plans: 33 sheets
- Estimated Total Sheets: 36 sheets

We do not anticipate the following sheets to be part of the design at any stage of the project:

- Signing and Striping Plans
- Civil Improvements
- Communication Plans
- Street Lighting Plans

It is assumed there will be one virtual meeting to discuss the project's progress.

#### ► Task 4.2: 90% PS&E Package

Based on one set of non-conflicting comments on the 60% plans, Kimley-Horn will advance the construction documents to a 90% level of design. Kimley-Horn will adjust the design plans based on City comments.

Kimley-Horn will prepare a comment response matrix to be submitted with the 90% submittal. The comment response matrix will include the original comments, Kimley-Horn's responses to the comments, and final resolution. Additional annotation will be added to the traffic signal plans based on the comments received by the City.



The engineer's OPCC will be updated based on the City's comments.

Special provisions consistent with the City's format and SPPWC "Greenbook" APWA current edition will be prepared.

It is assumed there will be one virtual meeting to discuss the project's progress.

#### ► Task 4.3: 100% PS&E Package

Based on one set of non-conflicting comments from the 90% PS&E comments, Kimley-Horn will advance the PS&E to the 100% level of design. It is expected that the comments will not result in a major change in design. Kimley-Horn will adjust the plans, OPCC, and technical specifications based on the City comments accordingly. Kimley-Horn will prepare a comment response matrix to be submitted with the final submittal, including the original comments, Kimley-Horn responses to the comments, and final resolution.

A licensed professional engineer will conduct a peer review and QC/QA of the design plans, OPCC, and technical specifications. A licensed professional engineer will stamp and sign all plan sheets and specifications for this submittal.

It is assumed there will be one virtual meeting to discuss the project's progress.

#### ► Task 4.4: Leading Pedestrian Interval (LPI) Timing Sheets

Kimley-Horn will prepare timing sheets with LPI after the 100% PS&E package has been completed. This will be included in the construction phase for the contractor to implement during construction. Our team will prepare updated traffic signal timing sheets at 49 intersections across the city.

We will do a quick review of the coordination so that the added walk time does not break any coordination minimum split rules. It is assumed that all existing timing sheets and turning movement count data will be provided by the City.

#### ► Task 4.5: Right-of-Way

Kimley-Horn understands the project will be completed within the public right-of-way. The project will not require any utility relocation or right-of-way acquisition or easements. If any other work will occur outside of the right-of-way in addition to what is anticipated in this scope of work, additional scope and fee would be required.

Kimley-Horn will fill out Caltrans LAPM Exhibit 13-A for the City to submit to the Caltrans District 12 Right-of-Way office. This will be completed after the 90% PS&E submittal.

#### ► Task 4.6: Request for Authorization to Proceed with Construction (RFA for CON)

For the project to go out to bid, an E-76 Construction Authorization is required for federally funded projects. Kimley-Horn will prepare the Request for Authorization for Construction (RFA for CON) forms consistent with LAPM Chapter 3. Kimley-Horn will coordinate with District 12 Local Assistance office to prepare all exhibits and authorization forms to request the E-76 for CON per Caltrans federal funding requirements.

Kimley-Horn will begin this process after the 100% PS&E submittal.

#### ► Task 4.7 Processing and Approvals

The Kimley-Horn team will prepare 2 Caltrans reimbursement requests based on paid invoices to maintain project activity and reimburse the agency.

### Task 4 Deliverables

- Attendance at virtual meetings
- 60%, 90%, & 100% plans and OPCC in PDF format
- Special & technical specifications & Bid List in PDF format
- Updated traffic signal timing sheets in Excel and PDF formats
- Right-of-way and RFA for CON packages
- Submitting invoices to Caltrans

### Additional Services

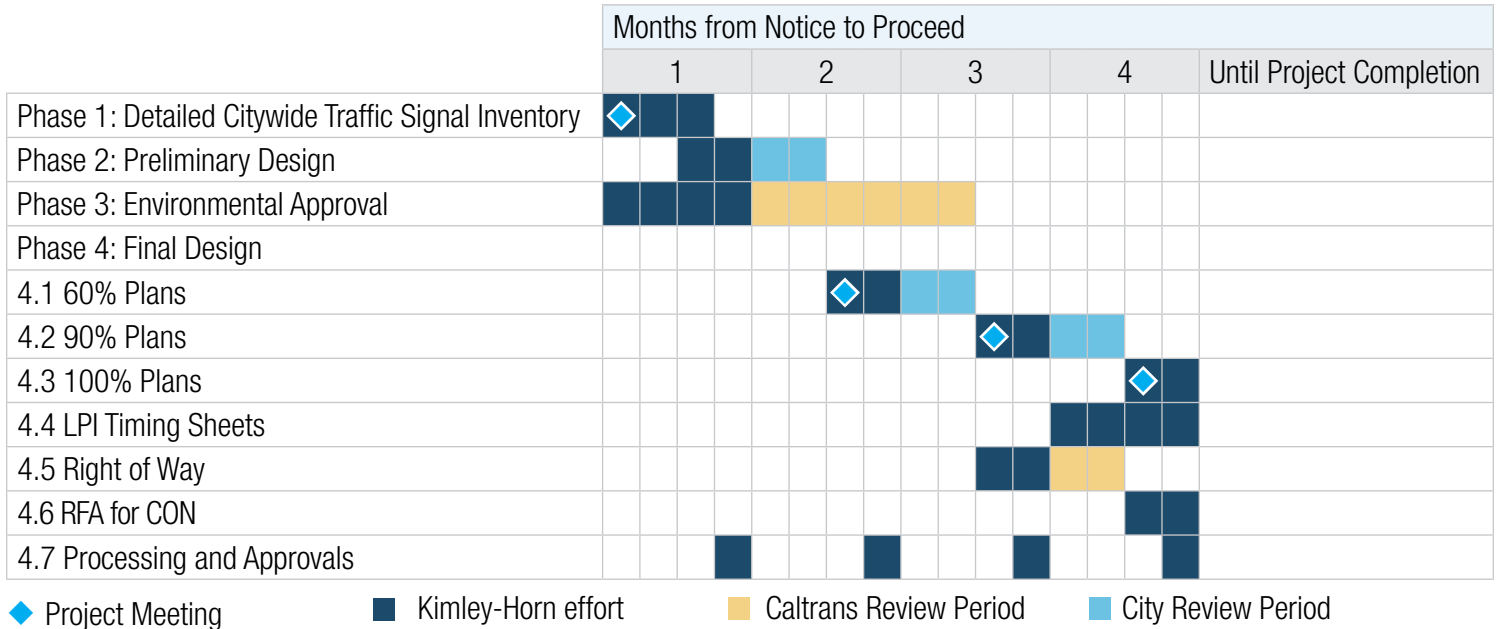
Any services not specifically described in the above scope, as well as any changes in the scope the Client requests, will be considered Additional Services.

- Available record plans and documents shall be provided by the City.
- Utility company's fees, and the City's and other Agencies' permit fees are excluded.

- Topographic survey is not included.
- Traffic Control or Civil Improvement plans are not included.
- Bidding and Construction Support are not included.
- As Builts (Record Drawings) are not included.

### 3.3 Project Schedule

Our draft project schedule, highlighting project tasks, durations, start and completion dates, and time allocations for City and other agency review, is provided below. This schedule assumes completion of the project within 120 days of the City's Notice to Proceed (NTP) as requested in the RFP. It is our intent to review this schedule with the City at the start of the project and make any desired adjustments and track the project work as a progress schedule by providing regular updates.



### 3.4 Potential Issues and Responses

#### Issue: Communication

Paramount to a project's success is a continuous partnership that adapts as necessary to unforeseen circumstances. We will include critical decision-making points in our work plan so the project team and the City can agree upon the best course of action to keep the project on track. There will always be unexpected challenges unique to any given project; it is critical that an approach be developed to control what can be controlled and factor in mechanisms for dealing with the unexpected.

Our experience has shown that there really is no such thing as "over-communication" between the client and the design team. For this reason, we recommend the use of the following communication protocol, which we have employed successfully on numerous projects:

- A bi-weekly conference call between the planning team (with client participation, as needed) to discuss progress and schedule.
- A monthly progress report summarizing, at a minimum, the following information:
  - Research and data source updates
  - Upcoming tasks and associated required preparation
  - Milestone list, with anticipated and actual
  - Anticipated project issues and strategies for solutions

#### Issue: Schedule Control

Schedule control begins with the preparation of a detailed schedule that includes milestone completion dates for specific tasks and the overall project. We will develop a work plan that allocates personnel commitments for each task. Twice a month, our integrated Management Information System (MIS) generates a Project Effort Report displaying the actual effort expended by task, which allows us to make, on a timely basis, any adjustments necessary to maintain schedule and stay within budget. Equally important are open lines of communication between City staff, our subconsultants, and permitting agencies. Our schedule process includes these factors, building into our timelines when the schedule is adjusted. We follow our mandate, seeking always to deliver on-time results regardless of ongoing or unexpected challenges.

### Issue: Construction Costs

We understand that the largest costs to our clients are those related to construction. We are committed to preparing thorough plans and specifications that accurately define project requirements. Each project deliverable undergoes a rigorous quality review prior to finalization. We break down our project designs into discrete pay items with specific descriptions to avoid misunderstandings by the contractor during bidding and construction. We carefully monitor contractor progress during construction and assist them in interpreting the contract requirements whenever a question arises. We also review proposals from the contractor to modify elements of construction that may offer cost or schedule benefits to the client.

We are proactive and adept at mitigating construction issues. We apply conflict mitigation techniques to handle claim issues properly. We have the experience and expertise to analyze time and cost impacts and propose recommendations. Communication and coordination efforts are essential for resolving issues before they become project setbacks. Project records will be maintained for any potential impacts involving changed conditions, extra work, unforeseen conditions, and delays. As the project nears full completion, our team will follow up on the contractor's punch list and review it against any pertinent closeout items and project requirements. Kimley-Horn will share this information with the City along with the final project files.

## 4. QUALIFICATIONS & EXPERIENCE OF THE FIRM

### 4.1 Kimley-Horn Qualifications and Experience

Founded in 1967, Kimley-Horn is a privately held corporation that has grown into a leading engineering consulting firm offering comprehensive and innovative multi-disciplinary services to public and private agencies throughout the United States. We employ more than 7,700 personnel in 133 offices nationwide, including 13 offices in California—**our local Orange office is less than 12 miles from the City's offices**—and we staff over 800 engineers, planners, analysts, and administrative staff. Our growth is the result of the firm's commitment to integrity and dedication to providing quality services—in fact, more than 90 percent of our work comes from repeat clients, including the **City of Costa Mesa**. We provide our clients with the local knowledge and responsiveness of a small firm, backed by the depth of resources only a national firm can offer.

#### Technical Expertise and Relevant Services Offered

As a recognized nationwide leader in engineering consulting services, Kimley-Horn's professionals understand the complexities of HSIP projects and can develop informed solutions tailored to your specific needs. We have an extensive history of successfully completing similar traffic signal network upgrade projects on time and within budget. Our technical qualifications and strengths cover a wide variety of project types and requirements, which will be utilized as determined at each project site. Some of our principal practice areas include:

#### ► Signal Timing Analysis and Signal System Design

For the past five decades, we have developed and implemented signal synchronization timing, created signal system plans, and built dozens of systems for numerous agencies.

Collectively, our team members have completed traffic signal timing and synchronization for over 2,000 traffic and interconnect signals, as well as traffic signal design for more than 5,000 signals, 550 Closed-Circuit Television (CCTV) designs, 30 Changeable Message Signs (CMS) designs, and over 2,000 miles of interconnect design plans and integration.

We have been responsible for virtually every aspect of traffic systems, including signal timing and coordination; plans, specifications, and estimates (PS&E); conceptual designs; operational feasibility; communication architecture; system design; software development; and deployment and implementation plans.

#### ► Caltrans Experience

The City has received funding grants through the Caltrans Call for Projects for the federal HSIP Cycle 11. Kimley-Horn has completed numerous HSIPs, ranging from single intersections to multiple-intersection corridors. We understand that familiarity with the coordination and approval process is key to the timely completion of these projects.

#### ► Bidding and Construction Support

Kimley-Horn routinely serves clients during the construction phases of their projects, providing bidding and construction support services to ensure project success from beginning to end. We can assist in preparing and distributing bid documents for the City, reviewing contractor bids, and preparing bid tabulations and contractor recommendations. Our years of experience with

construction contract administration have made our designs more cost-effective and practical, and have given us a unique ability to problem-solve in the field during construction.

### Subconsultant Partners

#### Lin Consulting, Inc. (LCI) – Traffic Signal Plans

Founded in 1997, LCI is a certified SBE, UDBE, MBE, CBE, and SB-Micro-business enterprise. For over 27 years, LCI has been well-regarded for their traffic and electrical engineering services for traffic signal and safety improvements projects throughout Southern California. LCI has consistently produced quality designs in accordance with agency guidelines under tight time constraints and has a working relationship in the City of Costa Mesa. LCI has teamed up with Kimley-Horn for over 20 years.

#### Avant-Garde – Environmental and Caltrans LAPM

Avant-Garde has built a strong reputation for providing innovative and successful solutions for a number of public agencies throughout Southern California. Avant-Garde was incorporated in September 2002 and is a 100% woman-owned California Corporation. Avant-Garde is also a certified MBE, WBE, DBE, SBE). Their staff are experts in program management, compliance management, grant writing, and funding identification and administration.

#### AET & Associates, Inc. (AET) – Traffic Signal Timing Sheet Support

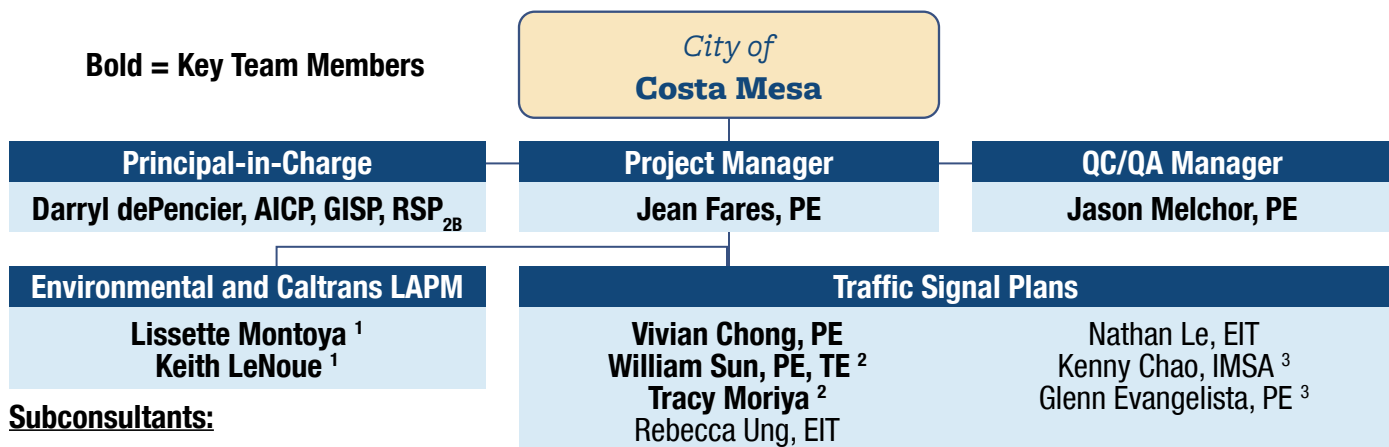
AET is a certified DBE, SBE and CBE firm, providing a wide range of system engineering, traffic engineering, ITS design, and transportation planning consulting services throughout Southern California. They are recognized locally for their ITS, implementation, networking, and integration expertise. AET engineers and planners have extensive expertise in traffic signal design, traffic signal timing, traffic management center (TMC), systems planning, traffic management, network engineering, systems engineering, and system implementation.

## 4.2 Proposed Team Members

Kimley-Horn understands that when you choose a consulting firm, you are really choosing the people who will bring you technical expertise, hands-on experience with similar projects, and a commitment to timely, high-quality deliverables and client service. Our project team is unsurpassed in local knowledge and relevant experience and has been structured to provide strong support to the City. Resumes of our proposed team members have been included in **Section 6 – Key Personnel**.

## 4.3 Team Organization

The organization chart below delineates the roles and responsibilities of both Kimley-Horn's key personnel and all subconsultant staff. Notably, our team will be led by **Jean Fares, PE**, a successful Kimley-Horn project manager with over 35 years of specialized experience in transportation engineering. Our proposed team consists of individuals with extensive experience working together to provide professional engineering services to similar agencies.



#### Subconsultants:

1. Avant-Garde
2. LIN Consulting, Inc.
3. AET & Associates, Inc.

## 4.4 Project Manager Experience and Commitment

Proposed project manager **Jean Fares, PE** has been leading HSIP projects throughout Southern California for **XX** years. His decades of relevant experience and commitment to the City make him very well suited to managing this project and our proposed team. ***Jean will commit 45% of his time to managing this project.***

## 4.5 Depth of Team Resources

The members of our project team were selected using three criteria: their experience with similar projects, their working relationship with the proposed team, and their availability to assume the technical responsibilities requested in the RFP. In order to confirm our team members' availability, Kimley-Horn uses a proactive management system known as "castaheads" to detail every project's personnel needs and determine each staff person's availability. This system forecasts our workload over a six-month period and helps to avoid work overload and shortfalls for each office and discipline.

## 4.6 Firm Structure – Corporation

**Name:** Kimley-Horn and Associates, Inc.  
**Incorporated:** February 10, 1967  
**Corporate Office:** 421 Fayetteville Street, Suite 600  
 Raleigh, NC 27601

**Local Office:** 1100 Town and Country Road, Suite 700  
 Orange, CA 92868  
**Date Local Office Opened:** 1988

Kimley-Horn is not a partnership or joint venture.

## 4.7 Current and Previous Project Experience

Kimley-Horn has more than five decades of consecutive experience performing similar signalized intersection work for public agencies throughout Southern California. **We have included descriptions of our relevant project experience as a team and a matrix summarizing our team's extensive experience with similar projects on the following pages.**

# 5. FINANCIAL CAPACITY

## Audited Financials

Per the City's RFP, we have provided copies of audited financials from the past three years within the **Appendix. Please note that this information is confidential and is not subject to public disclosure.**

# 6. KEY PERSONNEL

The table below identifies the members of staff who will be assigned to act in key management positions – please refer to the organization chart on page 9 for a complete list of additional support staff as well.

Resumes for each proposal staff member—including name, positions, phone number, email address, education, and years and type of relevant experience—are provided starting on the following page.

Key Staff Name and Role	Project Function
Jean Fares, PE, <b>Project Manager</b>	<ul style="list-style-type: none"> <li>Main point of contact for City staff</li> <li>Guide the project team on all tasks. oversee and manage subconsultant effort, etc.</li> </ul>
Darryl dePencier, AICP, GISP, RSP <sub>2B</sub> , <b>Principal-in-Charge</b>	<ul style="list-style-type: none"> <li>Guide the team through Caltrans LAPM requirements</li> </ul>
Jason Melchor, PE, <b>QC/QA Manager</b>	<ul style="list-style-type: none"> <li>Provide independent quality assurance</li> <li>Review of project documents and supporting data</li> </ul>
Vivian Chong, PE, <b>Traffic Signal Plans</b>	<ul style="list-style-type: none"> <li>Production of PS&amp;E Packages</li> <li>Develop LPI Timing Sheets</li> </ul>
Lissette Montoya and Kevin LeNoue (Avant-Garde), <b>Environmental and Caltrans LAPM</b>	<ul style="list-style-type: none"> <li>Caltrans coordination</li> <li>Complete Caltrans documentation</li> </ul>
William Sun, PE and Tracy Moriya (LIN Consulting), <b>Traffic Signal Plans</b>	<ul style="list-style-type: none"> <li>Production of PS&amp;E Packages</li> </ul>



Client, Project Name, Location	Reference Information	Description of Work and Responsibilities
<b>City of West Covina Preliminary Engineering Services (PE) Phase Services, HSIP Cycle 10 Improvements, West Covina, CA</b>	<b>Name:</b> Okan Demirci <b>Title:</b> City Consultant <b>Project Duration:</b> 01/2023 – Ongoing <b>Phone:</b> 626.939.8425	Kimley-Horn was recently selected by the City of West Covina to provide design services for multiple traffic signals across the city. Preparation for this project included coordinating with local utility companies to obtain record base maps of utility lines in the area. Our team will coordinate with utility companies until the start of construction to facilitate adjustment and facility relocation. During the preliminary engineering phase, Kimley-Horn reviewed all available right-of-way maps, assessor parcel maps, easement information, as-built improvement plans, utility information, and survey information. Our team also conducted field investigations at each intersection location and prepared preliminary engineering plans to show tentative traffic signal improvements. Following City review and comments, our team will prepare 60%, 90%, and 100% complete PS&E construction documents to submit to the City for review. Once the project moves into the bidding phase, Kimley-Horn will assist the City staff with answering pre-bid questions and preparing responses to requests for information. Our team will also assist with coordination and support during the construction stages of the project. Finally, we will prepare updated traffic signal timing sheets for the intersections covered in the project and record drawing as-builts following completion of construction.
<b>City of South El Monte, Design Services for Traffic Signal Improvements at Various Signalized Intersections, South El Monte, CA</b>	<b>Name:</b> Okan Demirci <b>Title:</b> City Consultant <b>Project Duration:</b> 09/2022 – Ongoing <b>Phone:</b> 626.939.8425	Kimley-Horn is working with the City of South El Monte to improve the safety and operability of 11 signalized intersections throughout the City. The City compiled collision data history and guidance from the Caltrans Local Roadway Safety Manual (LRSM) to develop two countermeasures: improve signal hardware and install pedestrian countdown signal heads. Our team is working with the City to evaluate each project site to determine the upgrades and improvements needed and provide preliminary environmental studies, plans, specifications & estimates (PS&E), bidding and construction support, and record drawings as-builts.
<b>City of South El Monte, Traffic Signal Improvements at Lee Avenue/Garvey Avenue and Durfee Avenue/Peck Road, South El Monte, CA</b>	<b>Name:</b> Okan Demirci <b>Title:</b> City Consultant <b>Project Duration:</b> 01/2023 – Ongoing <b>Phone:</b> 626.939.8425	Kimley-Horn is working with the City of South El Monte to design safety improvements at two signalized intersections: Lee Avenue and Garvey Avenue and Durfee Avenue and Peck Road–Michael Hunt Drive. Our team is providing left turn phasing; signal hardware improvements to the traffic signal lenses; backplates with retroreflective borders, mounting, size, and number; and installation of pedestrian countdown signal heads with audible push button display. Kimley-Horn is partnered with Avant-Garde, who is preparing the Categorical Exception documents and coordinating with the City to receive approval.
<b>City of Monterey Park, Various Signalized Intersections along Garfield Avenue Between the Northern and Southern City Limits, Monterey Park, CA</b>	<b>Name:</b> Anthony Bendezu <b>Title:</b> Civil Engineering Associate <b>Project Duration:</b> 06/2022 – Ongoing <b>Phone:</b> 626.307.1283	Nine intersections along Garfield Avenue underwent improvements through HSIP Cycle 9 funding. Kimley-Horn worked with the City to upgrade vehicle signal heads and install retroreflective borders on backplates and countdown pedestrian heads. The team coordinated with Caltrans to submit all necessary documentation, such as Local Assistance Procedures Manuals (LAPM) forms, environmental categorical exemption documents, right-of-way forms, and request for authorization for construction.
<b>City of Maywood, Engineering Services for the Preparation of PS&amp;E for HSIP Cycle 11 Traffic Signal Improvements at Various Locations, Maywood, CA</b>	<b>Name:</b> Mohammad Mostahkami <b>Title:</b> Director of Public Works <b>Project Duration:</b> 10/2023 – Ongoing <b>Phone:</b> 323.563.9512	Kimley-Horn is currently working with the City to improve safety and operability at 12 existing signalized intersections through the installation of retroreflective signal heads, 12” vehicle heads, Leading Pedestrian Interval (LPI), and pedestrian countdown signal heads. Additional improvements include installing high-visibility pedestrian crossings at several intersections. This project received the majority of its funding from the HSIP program and our team worked closely with City staff to ensure the proper documentation was filed with Caltrans.
<b>City of Norwalk, Norwalk Blvd Final Design Services for Traffic Signal Improvements, Norwalk, CA</b>	<b>Name:</b> Okan Demirci <b>Title:</b> City Consultant <b>Project Duration:</b> 09/2022- Ongoing <b>Phone:</b> 626.939.8425	Kimley-Horn provided engineering services to the City of Norwalk for traffic signal improvements, ITS improvements, and signal timing coordination along Norwalk Boulevard. The project consists of left turn phasing improvements at six intersections, various other traffic signal upgrades, fiber-optic installation, communication equipment installation and upgrades, signing and striping upgrades, and curb ramp design. CEQA/environmental documentation is also required in support of a Categorical Exemption (CE) to submit to Caltrans for approval. Kimley-Horn’s services include PS&E, field review, research of relevant design standards and existing data, utility coordination, traffic count data collection, and development of signal timing coordination plans for AM, midday, PM, and weekend peak periods.
<b>City of San Bernardino, Upgrade of Various Signal Hardware on 224 Signalized Intersections on Various Arterials, San Bernadino, CA</b>	<b>Name:</b> Azzam Jabshah <b>Title:</b> Traffic Engineer <b>Project Duration:</b> 03/2020 – Ongoing <b>Phone:</b> 909.384.7251	Through HSIP Cycle 9 funding, the City of San Bernardino received funding to upgrade various signal hardware for 224 signalized intersections throughout the city. Proposed improvements at the intersections include upgrades to signal hardware components, including traffic signal heads, push buttons, and pedestrian signal heads. Most of the traffic signal hardware at the study intersections had been installed decades ago and required equipment upgrades to bring signal hardware component operations up to date to meet minimum ADA and California Manual on Uniform Traffic Control Devices (CA MUTCD) requirements. Kimley-Horn is providing PS&E services and assisting the City in updating outdated and damaged traffic signal hardware, installing new hardware where necessary, and improving safety by implementing or replacing traffic signal head components, pedestrian signal heads, and pedestrian push buttons. Kimley-Horn is providing civil, traffic, and environmental services, which include the PES and CEQA/NEPA documents.
<b>City of Culver City, Signal Upgrade and Left Turn Phasing Project, No. HSIPL 5240 (035), Culver City, CA</b>	<b>Name:</b> Andrew Maximous <b>Title:</b> Mobility and Traffic Engineering Manager <b>Project Duration:</b> 08/2018 – Ongoing <b>Phone:</b> 310.253.5634	Kimley-Horn was selected by the City of Culver City to provide designs for 12 signalized intersections in the city. Our services include field review and survey, utility research, ADA curb ramp design, the preparation of construction drawings for traffic signal modification design, and the installation of left turn phasing.



### Jean Fares, PE

*Project Manager; Bidding/Construction Support*

Jean has 35 years of experience with the planning and design of traffic and transportation projects throughout California and the western U.S. As a registered Professional Engineer in California, he has provided traffic signal timing at over 2,500 locations, traffic signal design at over 2,000 locations, and signal system design at over 1,500 locations, and has wide-ranging experience with traffic operations, signing and marking plans preparation, Transportation Management Plans (TMPs), and traffic control plans. Jean also has extensive expertise in applying traffic engineering, ITS technologies, and communications infrastructure design to leading design-build transportation and transit projects.

### Professional Credentials/Affiliations

- Bachelor of Science, California State Polytechnic University, Pomona
- Professional Engineer in California #2097
- Institute of Transportation Engineers (ITE), Member

## RELEVANT EXPERIENCE

- **City of West Covina, Preliminary Engineering Phase Services, HSIP Cycle 10 Improvements, West Covina, CA**  
– Project Manager
- **City of South El Monte, Design Services for Traffic Signal Improvements at Various Signalized Intersections, HSIP, South El Monte, CA** – Project Manager
- **City of Monterey Park, Design Engineering Services for Various Signalized Intersections Along Garfield Avenue, HSIP, Monterey Park, CA** – Project Manager
- **City of Palm Springs, Traffic Signal Improvements, HSIP, Palm Springs, CA** – Project Manager
- **City of Culver City, Signal Upgrade and Left Turn Phasing, HSIP, Culver City, CA** – Project Manager
- **City of San Bernardino, Upgrade of Various Signal Hardware on 224 Signalized Intersections on Various Arterials, HSIP, San Bernardino, CA** – Project Manager
- **City of West Hollywood, Civil Engineering Design Services for Sunset/Santa Monica Fiber Loop, HSIP, West Hollywood, CA** – Project Manager
- **City of Downey, Paramount Boulevard Traffic Signal Upgrade and Fiber-Optic Communication System, HSIP, Downey, CA** – Project Manager
- **City of Santa Clarita, Wiley Canyon Road at Orchard Village Road and Newhall Avenue at Railroad Avenue Intersection Improvement, HSIP, Santa Clarita, CA** – Deputy Project Manager
- **City of Santa Monica, Transit Priority System Phase 2 and ATMS, Phase 3, Santa Monica, CA** – Project Manager
- **Coachella Valley Association of Governments, Traffic Signal Synchronization Project (TSSP), Coachella Valley, CA** – Project Manager
- **City of Thousand Oaks, Rancho Road Sidewalks and Bike Lanes, HSIP, Thousand Oaks, CA** – Project Manager
- **County of Los Angeles, Woodruff Avenue TSSP, Los Angeles County, CA** – Project Manager
- **City of Glendale, Smart Corridor—San Fernando Road, Glendale, CA** – Project Manager
- **City of Santa Clarita, San Fernando Road Improvements, Santa Clarita, CA** – Project Manager
- **City of Downey, Imperial Highway Traffic Signal Fiber-Optic Communication System and Upgrades Project, Downey, CA** – Project Manager
- **County of Los Angeles, On-Call Traffic Design Services, Los Angeles County, CA** – Project Manager
- **City of Downey, On-Call Traffic Engineering Services, Downey, CA** – Project Manager
- **City of Long Beach, On-Call Traffic Engineering Services, Long Beach, CA** – Project Manager
- **City of Arcadia, Santa Anita Avenue Corridor Traffic Signal Improvement Design, Arcadia, CA** – Project Manager
- **City of Glendale, Consultant Services for Traffic Engineering and Fiber-Optic Communication Design, Glendale, CA**  
– Project Manager
- **City of Burbank, TSSP for 18 Intersections Along Hollywood Way, Burbank, CA** – Project Manager



## Jean Fares, PE

(Cont.)

- **City of Burbank, San Fernando Road ITS Project, Burbank, CA** – Project Manager
- **City of Manhattan Beach, Advanced Traffic Signal System Project, Manhattan Beach, CA** – Project Manager
- **City of Santa Monica, Traffic Signal Timing Plans, Phase IV, Santa Monica, CA** – Principal-in-Charge
- **City of Agoura Hills, ITS Planning and Computerized Traffic Signal Synchronization, Agoura Hills, CA** – Project Manager
- **City of Santa Clarita, Sierra Highway Traffic Signal Interconnect and Adaptive System, Santa Clarita, CA** – Project Manager







**Darryl dePencier, AICP, GISP, RSP<sub>2B</sub>**  
Principal-in-Charge

Darryl has more than 15 years of experience in leading transportation and safety planning projects. He uses data-driven approaches to assess transportation system performance for operations, safety, equity, and other factors as needed. As a GIS Professional, Darryl uses GIS to efficiently assess existing conditions and analyze project alternatives. He has supported the development and implementation of GIS analysis methods for traffic performance assessment, traffic safety analysis, ADA transition plans, and other transportation planning functions. He is experienced in creating and applying adjustment factors and elasticities to evaluate Vehicle Miles Traveled (VMT) impacts of projects or developments that are typically not handled by travel demand models. He has worked on studies at the statewide, regional, local, and site-specific levels that include guidance documents, LRSPs, safety thresholds and audits, and local countermeasure recommendations.

## RELEVANT EXPERIENCE

- **City of Maywood, LRSP, Maywood, CA** – Project Manager
- **Caltrans, California Strategic Highway Safety Plan (SHSP) Update and Implementation, Statewide, CA** – Project Planner
- **Caltrans, Safety Performance Measure Target Setting Analysis, Statewide, CA** – Project Planner
- **City of Ventura, Systemic Safety Analysis Report Program (SSARP), Ventura, CA** – Project Planner
- **City of Lancaster, SSARP, Lancaster, CA** – Project Manager
- **City of Santa Clarita, Citywide Analysis of Pedestrian and Bicycle Collisions SSARP, Santa Clarita, CA** – Project Planner
- **County of Ventura, LRSP, Ventura County, CA** – Project Manager
- **City of Artesia, LRSP, Artesia, CA** – Project Manager
- **City of Artesia, Active Transportation Plan, Artesia, CA** – Project Advisor
- **City of Anaheim, LRSP, Anaheim, CA** – Project Planner
- **City of Seal Beach, LRSP, Seal Beach, CA** – Project Planner
- **City of Eastvale, Systemic Safety Analysis Report (SSAR), Eastvale, CA** – Project Manager
- **City of Perris, LRSP, Perris, CA** – Project Manager
- **City of Palm Desert, LRSP, Palm Desert, CA** – Project Planner
- **City of La Quinta, SSAR, La Quinta, CA** – Project Planner
- **Orange County Transportation Authority (OCTA), Santa Ana Transit Cooperative Study, Santa Ana, CA** – Project Planner
- **City of Goleta, Traffic Safety Study for the SSAR/LRSP, Goleta, CA** – Project Planner
- **City of Imperial Beach, LRSP, Imperial Beach, CA** – Project Planner
- **County of Imperial, SSAR for Varied Roadways, Imperial County, CA** – Project Planner
- **Santa Cruz County Transportation Commission (SCCRTC), Unified Corridor Investment Study, Santa Cruz, CA** – Project Planner
- **San Benito Council of Governments (SBCOG), SR 25 Corridor Transit Alternatives Analysis, Hollister, CA** – Project Planner
- **Merced County Association of Governments, Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) 2018, Merced, CA** – Project Planner
- **City of Monterey, VMT Assessment and Mitigation Strategies for General Plan Implementation, Monterey, CA** – Project Planner
- **Stanislaus Council of Governments (StanCOG), Preparation of the 2018 RTP, SCS, and Environmental Impact Report (EIR), Modesto, CA** – Project Planner

## Professional Credentials/Affiliations

- Master of Urban Spatial Analytics, University of Pennsylvania
- Bachelor of Arts, Geography, Carleton University, Ottawa
- American Institute of Certified Planners #026552
- Geographic Information Systems Professional #59317
- Roadway Safety Professional (RSP<sub>1</sub>) #279
- Roadway Safety Professional (RSP<sub>2B</sub>) #17
- American Society of Landscape Architects, Member
- U.S. Green Building Council—National Capital Region, Member
- Cal Poly San Luis Obispo Landscape Architecture Department, Advisory Board



## Jason Melchor, PE

*QC/QA Manager*

Jason has over 25 years of experience in the management, design, and review of traffic engineering projects in California and has worked with clients in Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, and San Diego counties. His traffic engineering experience includes traffic signal design, signing and striping, traffic control, street lighting, signal interconnect and ITS design plans, and he has served as a key staff member on many transportation studies, safety studies, traffic and civil engineering design, and active transportation projects.

## Professional Credentials/Affiliations

- Bachelor of Science, Civil Engineering, University of California, Irvine
- Professional Engineer in California #65218
- Institute of Transportation Engineers (ITE), Member
- Orange County Traffic Engineering Council (OCTEC), Member

## RELEVANT EXPERIENCE

- **City of South El Monte, Design Services for Traffic Signal Improvements at Various Signalized Intersections, South El Monte, CA** – Task Lead, Traffic Signal Plans
- **City of Monterey Park, Design Engineering Services for Various Signalized Intersections Along Garfield Avenue, Monterey Park, CA** – Project Engineer
- **City of Palm Springs, Traffic Signal Improvements, Palm Springs, CA** – Project Engineer
- **City of Culver City, Signal Upgrade and Left Turn Phasing, Culver City, CA** – QC/QA Reviewer
- **City of San Bernardino, Upgrade of Various Signal Hardware on 224 Signalized Intersections on Various Arterials (HSIP), San Bernardino, CA** – Project Engineer
- **City of West Hollywood, Civil Engineering Design Services for Sunset/Santa Monica Fiber Loop, West Hollywood, CA** – Project Engineer
- **City of Downey, Paramount Boulevard Traffic Signal Upgrade and Fiber-Optic Communication System, Downey, CA** – Project Engineer
- **City of Santa Clarita, Wiley Canyon Road at Orchard Village Road and Newhall Avenue at Railroad Avenue Intersection Improvement, Santa Clarita, CA** – Project Engineer
- **City of Orange, Traffic Engineering Services, South Glassell Street at Palmyra Avenue, New Traffic Signal Project (HSIP), Orange, CA** – Project Manager
- **City of Santa Monica, Transit Priority System Phase 2 and ATMS, Phase 3, Santa Monica, CA** – Project Engineer
- **City of Goleta, Citywide Traffic Signal Upgrade Project (HSIP), Goleta, CA** – Project Manager
- **City of Buena Park, Auto Center Drive Traffic Signal and Median Design, Buena Park, CA** – Project Manager
- **City of Anaheim, Protected Left Turn Signal at Four Intersections (HSIP), Anaheim, CA** – Project Manager
- **City of Anaheim, Anaheim Boulevard at Santa Ana Street Traffic Signal Modification, Anaheim, CA** – Project Manager
- **City of Orange, Traffic Engineering Services, Glassell Street, Orange, CA** – Project Manager
- **City of Orange, Glassell Avenue Left Turn Lanes at Meats and Collins Avenue (HSIP), Orange, CA** – Project Manager
- **City of Fountain Valley, Euclid Street Traffic Signal Design, Fountain Valley, CA** – Project Engineer
- **City of Irvine, Design for Kazan/Walnut Traffic Signal Improvements, Irvine, CA** – Project Engineer
- **City of Newport Beach, East Coast Highway Signal Rehabilitation (10 intersections), Newport Beach, CA** – Project Manager
- **OCTA, Traffic Signal Synchronization Master Plan 2020 Update, Orange County, CA** – Project Engineer
- **OCTA, Chapman Avenue Traffic TSSP, Orange County, CA** – Project Engineer
- **OCTA, Crown Valley Parkway TSSP, Orange County, CA** – Project Engineer
- **City of Chino, Euclid Street Traffic Signal Design, Chino, CA** – Project Engineer
- **City of Rancho Mirage, Traffic Signal Interconnect Improvements, Rancho Mirage, CA** – Project Engineer
- **City of Jurupa Valley, Pedley Road at Jurupa Road Intersection Improvements, Jurupa Valley, CA**



**Jason Melchor, PE***(Cont.)*

- Project Manager
- **City of Jurupa Valley, Preparation of Traffic Signal Warrants and Design of Traffic Control Devices, Limonite Avenue and Marlatt Street, Jurupa Valley, CA** – Project Manager
- **City of Rancho Cucamonga, Base Line Road Traffic Signal Interconnect and Signal Coordination, Rancho Cucamonga, CA** – Project Engineer
- **City of Moreno Valley, On-Call Traffic and Transportation Plan Review Services, Moreno Valley, CA** – Project Engineer
- **City of Palm Desert, Traffic Operations and Capacity Improvements, Palm Desert, CA** – Project Engineer





**Lissette Montoya**  
*Environmental and Caltrans LAPM*



Ms. Montoya has more than 20 years of comprehensive expertise in project management and analysis, funding management, grant administration, and community outreach programs. She is experienced in issues impacting City governments and contract administration. Ms. Montoya is the Vice-President and CFO of Avant-Garde. She has experience in identifying federal and state fund allocation balances, programming funds, and administers long-and-short range programs consistent with the economic capabilities of the City. Ms. Montoya directs the Program Management team to ensure that projects are developed in accordance with policy and procedural requirements, assists in determining eligible projects for various funding sources, and manages development and capital improvement programs/projects from conception to completion. Ms. Montoya has assisted various agencies in performing a variety of analyses and studies to identify State and Federal funding options; performed time-critical and confidential studies related to fiscal and administrative requirements of grant programs; assisted in the grants solicitation process; planned and coordinated the implementation of awarded grants to ensure that the City was in compliance with applicable laws and regulations, and monitored and audited grant expenses. Under her direction, our team has successfully monitored federal and state funding for municipal agencies throughout Southern California and written grants to secure over \$483.1 million in funding for government agencies.

### Professional Credentials/Affiliations

- Masters, Business Administration, California State Polytechnic University, Pomona
- Bachelor of Arts, Business Management, California State Polytechnic University, Pomona

### RELEVANT EXPERIENCE

- **City of Bell Gardens, HSIP Cycle 8, Bell Gardens, CA** – Funding Manager
- **City of Commerce, HSIP Cycle 7, Commerce, CA** – Funding Manager
- **City of Lynwood, HSIP Cycle 5, Lynwood, CA** – Funding Manager
- **City of Manhattan Beach, HSIP Cycle 5, Manhattan Beach, CA** – Funding Manager
- **City of Monterey Park, HSIP Cycle 9, Monterey Park, CA** – Funding Manager
- **City of South El Monte, HSIP Cycle 9, South El Monte, CA** – Funding Manager
- **City of Industry, SR-57/60 Confluence, Industry, CA** – Project/Funding Manager
- **City of Industry, Local Highway Bridge Program, Industry, CA** – Project/Funding Manager
- **City of Industry, Lemon Ave Interchange, Industry, CA** – Project/Funding Manager
- **City of La Mirada, Alondra/Valley View Improvements, La Mirada, CA** – Project/Funding Manager
- **City of Temple City, Rosemead Blvd Beautification & Enhancements, Temple City, CA** – Funding Manager
- **Caltrans Local Assistance Process for various projects and various agencies including: Alhambra, Bell Gardens, Carson, Culver City, Commerce, El Monte, La Canada Flintridge, Lynwood, Manhattan Beach, Montebello, Monterey Park, Norwalk, Rosemead, South El Monte, Temple City, Ventura, and West Covina**



## Keith LeNoue

*Environmental and Caltrans LAPM*

Mr. LeNoue has over three years of experience in administrative and municipal program services and contract administration. As a Program Coordinator, Mr. LeNoue's main responsibilities include fund administration, grant research and writing, community outreach support, and program management services. He has worked in conjunction with the project managers of the company and served as a liaison to provide support on various projects.

Mr. LeNoue assists clients by identifying federal and state fund allocation balances, assisting in determining eligible projects, and providing advisement of program requirements. He is experienced in issues impacting City governments and has developing expertise in contract administration. His responsibilities have included interfacing with Federal, State and Local Agencies to define, develop, and manage project scopes, schedules, cooperative agreements and overall project management to ensure projects are delivered on time and on schedule. Mr. LeNoue has experience in preparing documents in accordance with the Local Assistance Procedures Manual for federally funded projects. He assists with processing documentation for projects to obtain Caltrans authorizations and reimbursement requests.



### Professional Credentials/Affiliations

- Masters, Business Administration, Azusa Pacific University
- Bachelor of Arts, Business Management, Azusa Pacific University

### RELEVANT EXPERIENCE

- **City of Bell Gardens, HSIP Cycle 8, Bell Gardens, CA** – Funding Coordinator
- **City of Commerce, HSIP Cycle 7, Commerce, CA** – Funding Coordinator
- **City of Commerce, HSIP Cycle 8, Commerce, CA** – Funding Coordinator
- **City of Lynwood, HSIP Cycle 9, Lynwood, CA** – Funding Coordinator
- **City of Manhattan Beach, HSIP Cycle 5, Manhattan Beach, CA** – Funding Coordinator
- **City of Monterey Park, HSIP Cycle 7, Monterey Park, CA** – Funding Coordinator
- **City of Monterey Park, HSIP Cycle 4, Monterey Park, CA** – Funding Coordinator
- **City of Monterey Park, HSIP Cycle 9, Monterey Park, CA** – Funding Coordinator
- **City of La Mirada, Alondra/Valley View Improvements, La Mirada, CA** – Funding Coordinator
- **City of Norwalk, HSIP Cycle 6, Norwalk, CA** – Funding Coordinator
- **City of Norwalk, HSIP Cycle 7, Norwalk, CA** – Funding Coordinator
- **City of Norwalk, HSIP Cycle 8, Norwalk, CA** – Funding Coordinator
- **City of South El Monte, HSIP Cycle 7, South El Monte, CA** – Funding Coordinator
- **City of South El Monte, HSIP Cycle 9, South El Monte, CA** – Funding Coordinator
- **City of Industry, Local Highway Bridge Program, Industry, CA** – Project/Funding Coordinator
- **City of Montebello, Montebello Way Traffic Signal Improvement HSIP, Montebello, CA** – Funding Coordinator
- **City of Montebello, Montebello Blvd Improvements ATP, Montebello, CA** – Funding Coordinator
- **City of Montebello, Arroyo Drive Improvements, Montebello, CA** – Funding Coordinator
- **City of El Monte, Santa Anita Ave Active Transportation CIP, El Monte, CA** – Funding Coordinator
- **City of El Monte, Ramona/Valley Intersection Improvements, El Monte, CA** – Funding Coordinator
- **City of El Monte, Ramona Boulevard Resurfacing, El Monte, CA** – Funding Coordinator
- **Caltrans Local Assistance Process for various projects and various agencies including: Alhambra, Bell Gardens, Carson, Culver City, Commerce, El Monte, La Canada Flintridge, Lynwood, Manhattan Beach, Montebello, Monterey Park, Norwalk, Rosemead, South El Monte, Temple City, Ventura, and West Covina**





### Vivian Chong, PE

*Traffic Signal Plans; Bidding/Construction Support*

Vivian is a civil engineer and has led and managed projects involving signal design, fiber-optic design, signing and striping, ADA curb ramp design, and traffic control for multiple jurisdictions throughout her career at Kimley-Horn. She has a strong background in projects involved with increasing safety for pedestrians and bicyclists, delivered on multiple projects with strict schedules, and familiar with HSIP, ATP, and SS4A grant funding requirements. She has extensive experience at every step of a project, such as executing site visits, producing plans, specifications, and estimate packages, managing budgets, keeping the project on schedule, coordinating with various jurisdictions, subconsultants, and utility companies, and providing support during the bidding and construction phases.

### Professional Credentials/Affiliations

- Bachelor of Science, Civil and Environmental Engineering, University of California, Los Angeles
- Professional Engineer in California #95833

## RELEVANT EXPERIENCE

- **County of Los Angeles, Eastern Ave Traffic Signal Synchronization Project, Los Angeles County, CA**  
– Project Engineer
- **County of Los Angeles, Rosecrans Ave Traffic Signal Synchronization Project, Los Angeles County, CA**  
– Project Engineer
- **County of Los Angeles, Woodruff Ave Traffic Signal Synchronization Project, Los Angeles County, CA**  
– Project Analyst
- **City of Palm Desert, Traffic Operations and Capacity Improvements Project, Palm Desert, CA** – Project Analyst
- **City of Maywood, Traffic Signal Improvements at Various Signalized Intersections HSIP Cycle 11 Improvements, Maywood, CA** – Project Manager
- **City of Menifee, Citywide Traffic Signal Safety Improvement Design Services, Menifee, CA** – Project Manager
- **City of West Covina Preliminary Engineering Services (PE) Phase Services, HSIP Cycle 10 Improvements, West Covina, CA** – Project Manager
- **City of South El Monte, Traffic Signal Improvements at Various Signalized Intersections HSIP Cycle 9 Project, South El Monte, CA** – Project Manager
- **City of South El Monte, Traffic Signal Improvements at Lee Ave & Garvey Ave and Durfee Ave & Peck Rd HSIP Cycle 10 Project, South El Monte, CA** – Project Manager
- **City of Monterey Park, Design Engineering Services for Various Signalized Intersections Along Garfield Ave HSIP Cycle 9 Project, Monterey, CA** – Project Manager
- **City of Culver City, MOVE Culver City 2023, Culver City, CA** – Project Engineer
- **County of Ventura, Las Posas Rd and 5th St Intersection Improvements, Ventura, CA** – Project Manager
- **City of Manhattan Beach, Manhattan Beach Advanced Traffic Signal Project, Manhattan Beach, CA** – Project Analyst
- **City of Inglewood, Intelligent Transportation Systems (ITS) Gap Closure Part II, Inglewood, CA** – Project Analyst
- **City of Santa Clarita, Slurry Seal Signing and Striping Project, Santa Clarita, CA** – Project Manager
- **City of Santa Clarita, Newhall Bike Boulevard, Santa Clarita, CA** – Project Engineer
- **City of Santa Clarita, Copper Hill Drive Traffic Signal and Interconnect, Santa Clarita, CA** – Project Analyst
- **City of Thousand Oaks, Thousand Oaks Boulevard Pedestrian Crossing, Thousand Oaks, CA** – Project Analyst
- **City of Palm Springs, Citywide Engineering and Traffic Survey (E&TS), Palm Springs, CA** – Project Analyst



**William Sun, PE, TE**  
*Traffic Signal Plans*

Mr. Sun has over 30 years of traffic engineering and transportation planning experience working as a consultant with various agencies throughout California.

His extensive design experience includes the design of Traffic, Electrical and Intelligent Transportation System (ITS) including traffic signal systems, signal interconnect and fiber optic communication systems, ramp metering systems, traffic monitoring systems, closed circuit television systems, roadway lighting, signing/stripping, worksite traffic control plans, detour plans, traffic operation and analysis, and Transportation Management Plans (TMP). Mr. Sun has provided his expertise on several major highway and multimodal projects for various agencies throughout California including Caltrans, metropolitan authorities, counties, and local cities. Mr. Sun has managed a number of design-build projects including Metro I-10/I-110 ExpressLanes, Exposition LRT/Mid-City Phase 1, Westside Purple Line Segment 2 and 3, and North Hollywood Station Underpass. His experience combined with his knowledge of current standards and best practices provide his clients with effective design solutions and well-prepared construction documents.

**LIN Consulting, Inc.**

*Traffic, Civil, and Electrical Consulting Engineers*

#### Professional Credentials/Affiliations

- Bachelor of Arts, Civil Engineering, University of California, Berkeley
- Professional Civil Engineer in California #57664
- Professional Traffic Engineer in California #2197
- Institute of Transportation Engineers, Member
- American Society of Civil Engineers, Member

#### RELEVANT EXPERIENCE

- **Los Angeles County Metropolitan Transportation Authority (LACMTA), Westside Purple Line Extension, Section 3 Tunnels Project** – Design/Build, Los Angeles, CA – Principal-in-Charge
- **LACMTA, Westside Purple Line Extension, Section 3 Stations Project - Design/Build, Los Angeles, CA** – Principal-in-Charge
- **LACMTA, Westside Purple Line Extension, Section 2, Los Angeles, CA** – Project Manager
- **City of Irvine, Jamboree Road/Michelson Drive Pedestrian Bridge, Irvine, CA** – Principal-in-Charge
- **City of Moreno Valley, Alessandro-Elsworth Intersection Improvements, Moreno Valley, CA** – Principal-in-Charge and Project Manager
- **City of Ventura, Traffic Signal at Telegraph Road and Claremont Way Intersection, Ventura, CA** – Principal-in-Charge
- **San Gabriel Valley Council of Governments (SGVCOG), Montebello Avenue Grade Separation Traffic Study, Montebello, CA** – Principal-in-Charge
- **LACMTA, LA County Grade Crossing and Safety Program, Los Angeles, CA** – Principal-in-Charge
- **City of Fontana, I-15/Duncan Canyon Road Interchange, Fontana, CA** – Task Manager
- **LACMTA, Raymer to Bernson Double Track, Los Angeles, CA** – Project Manager
- **SGVCOG, Puente Avenue Grade Separation Project, Industry, CA & Unincorporated Los Angeles County, CA** – Task Manager
- **LACMTA, Countywide Metro Rapid Signal Priority Expansion Project (Phase II), Los Angeles County, CA** – Project Engineer



### Tracy Moriya

#### Traffic Signal Plans

Tracy Moriya has over 36 years of experience in management and design of traffic engineering and transportation projects. His professional experience includes design of transportation systems, traffic signals, Intelligent Transportation Systems (ITS), guardrail design, CCTV video communication design, roadway and highway lighting, traffic signal system design, signing and striping, stage construction/handling, traffic control. He is an expert in developing design plans, as well as municipal engineering for traffic signal systems, fiber optic interconnect, traffic control, signing and striping projects, street lighting design street lighting design projects. Through his career, he has been involved in over 700 traffic signal design and coordination projects, ranging from minor modification of controller upgrades to installations /modifications of corridors with over 60 intersections. Tracy has worked with numerous agencies including the City of Los Angeles, Los Angeles County, Caltrans District 7, 8, & 12, Cities of Santa Monica, San Fernando, Long Beach, Inglewood, Norwalk, Brea, South Gate, Redondo Beach, Downey, Bell Gardens, Santa Fe Springs, Santa Clarita, Diamond Bar, Huntington Beach, Pomona, Anaheim, Irvine, Santa Ana, Corona, Tustin, Costa Mesa, Orange, San Marcos, Riverside, Moreno Valley, Cathedral City, Palm Springs, Chino, Chino Hills, Colton, Rancho Cucamonga, Ontario, Upland, Rialto, Fontana, Redlands, San Bernardino, San Bernardino County, Highland, Yucaipa and the Port of Long Beach, Port of Oakland and Los Angeles World Airports.

### LIN Consulting, Inc.

Traffic, Civil, and Electrical Consulting Engineers

#### Professional Credentials/Affiliations

- California State University Long Beach, Mathematics
- University of Irvine, Mathematics
- Institute of Transportation Studies (ITS) Extension, Traffic signal design
- University of California Extension, Street lighting design
- Northwestern University Traffic Institute, Intersection & Channelization Design
- Westech College, Microstation Intergraph PC Graphics and Computer
- Aided Drafting (CAD)
- President- Riverside/San Bernardino ITE (RSBITE)
- Member, Institute of Transportation Engineers (ITE)

#### RELEVANT EXPERIENCE

- **City of Fontana, Foothill Blvd from hemlock Avenue to Almeria Avenue Street Improvement, Fontana, CA**  
– Project Manager
- **City of Rancho Cucamonga, Etiwanda Grade Separation, Rancho Cucamonga, CA** – Project Manager
- **City of San Bernardino, PS&E for Upgrading Various Signal Hardware on 224 Signalized Intersections, San Bernardino, CA** – Project Manager
- **City of Lancaster, Lancaster Avenue I and 17th Street West Bus Stop Improvement, Lancaster, CA**  
– Project Manager
- **City of Santa Clarita, Circulation Improvement Phase II & III, Santa Clarita, CA** – Project Manager
- **SBCTA, I-215 Bi-County Landscape, San Bernardino County, CA** – Project Manager
- **LACMTA, Whittier Blvd Intersection Improvement, Whittier, CA** – Project Manager





## Rebecca Ung, EIT

*Traffic Signal Plans*

Rebecca is a transportation analyst that has experience in signing and striping design, traffic signal modifications, traffic mitigation efforts, and traffic operations. She has experience in AutoCAD, Microsoft Excel, and Synchro. Also, Rebecca has worked on HSIP projects, opinions of probable costs, and encroachment permit applications for multiple local jurisdictions.

## Professional Credentials/Affiliations

- Bachelor of Science, Civil Engineering, University of California, Irvine
- Engineer-in-Training, NCEES, #176402
- American Society of Civil Engineers (ASCE), Student Chapter

## RELEVANT EXPERIENCE

- **City of Santa Clarita, Newhall Bike Boulevard, Santa Clarita, CA** – Project Analyst
- **City of Culver City, Overland Avenue Bike Lane, Pedestrian, and High Friction Surface Treatment (HFST) Improvement Project, Culver City, CA** – Project Analyst
- **City of West Covina Preliminary Engineering Services (PE) Phase Services, HSIP Cycle 10 Improvements, HSIPL-5259 (030), West Covina, CA** – Project Analyst
- **City of Inglewood, Intelligent Transportation Systems (ITS) Gap Closure Part II, Inglewood, CA** – Project Analyst



**Nathan Le, EIT***Traffic Signal Plans*

Nathan is a transportation analyst experienced in traffic signal design, signing and striping design, and traffic operations. He has worked on design specifications, opinions of probable costs, utility plans, data collection and field review for multiple local jurisdictions. He has experience in AutoCAD and BlueBeam Revu.

**Professional Credentials/Affiliations**

- Bachelor of Science, Civil Engineering, University of California, Davis
- Engineer-in-Training in California, #179054

**RELEVANT EXPERIENCE**

- **City of Culver City, Overland Avenue Bike Lane, Pedestrian, and High Friction Surface Treatment (HFST) Improvement Project, Culver City, CA** – Project Analyst
- **City of Riverside, Local Road Safety Plan, Riverside, CA** – Project Analyst
- **City of Inglewood, Intelligent Transportation Systems (ITS) Gap Closure Part II, Inglewood, CA** – Project Analyst
- **Culver City, MOVE Culver City Independent Data Validation, Culver City, CA** – Project Analyst







**Kenny Chao, IMSA**  
*Senior Engineer*

Kenny is a traffic and ITS engineer with 22 years of experience who skillfully meets challenges and creates positive change. He has managed and designed projects

for various local agencies and Caltrans in the design of traffic signals, roadway lighting, fiber optic communication networks, CCTV systems, signing, striping, construction staging, and temporary traffic control.

Kenny has designed more than 750 traffic signals, 500 miles of fiber optic, and 100 roadway lighting systems. He has hands-on experience with the roadside equipment and the technologies needed to successfully implement and integrate numerous advanced traffic signal controller software and equipment systems.



#### Professional Credentials/Affiliations

- Executive Master in Business Administration, Chapman University
- Bachelor of Science, Civil Engineering, California State Polytechnic University, Pomona
- International Municipal Signal Association #AA 111992 & ZZ 111992

#### RELEVANT EXPERIENCE

- **City of Costa Mesa, Baker-Placentia-Victoria-19th Street Regional Traffic Signal Synchronization Project, Orange County, CA** – Project Manager
- **Orange County Transportation Authority (OCTA), OCTA Regional Traffic Signal Synchronization Program (TSSP), Orange County, CA** – Various Roles
- **OCTA, Westminster/17th Street (TSSP), CA** – Deputy Project Manager, Technical Advisor, And Task Lead
- **OCTA, Magnolia Street (TSSP), CA** – Principal-in-Charge, Task Lead For PS&E And Construction & System Integration
- **OCTA, Olympiad/Felipe (TSSP), Mission Viejo, CA** – Principal-in-Charge, Task Lead, And Technical Advisor
- **OCTA, State College Boulevard (TSSP), Anaheim, CA** – Project Manager
- **OCTA, Fairview Road, Costa Mesa, CA** – Task Lead
- **OCTA, Avenida Pico and El Camino Real (TSSP), San Clemente, CA** – Design Engineer
- **OCTA, Barranca Parkway, Von Karman Avenue, Irvine Center Drive, Macarthur Boulevard Signal Coordination Projects, Irvine, CA** – Project Engineer
- **City of Irvine/Caltrans District 12 Citv and Fiber Optic Design, Irvine, CA** – Project Manager
- **Caltrans District 12/OCTA, Beach Boulevard Traffic Light Synchronization Project (TSSP), CA** – Lead Designer
- **OCTA, Westminster/17th Street TSSP, Cities of: Santa Ana, Westminster, Huntington Beach, CA** – Deputy Project Manager, Technical Advisor, And Task Lead
- **OCTA, Magnolia Street TSSP, Cities of: Huntington Beach, Westminster, Garden Grove, Cypress, CA** – Principal-In-Charge, Task Lead for PS&E And Construction & System Integration
- **Fairview Road, Costa Mesa, CA** – Task Lead
- **City of Anaheim, City and ITS, and Fiber-Optic Communications System Design, Anaheim, CA** – Project Manager



**Glenn Evangelista, PE**  
Senior Engineer



Glenn is a Civil Engineer with sixteen years of experience in transportation/traffic engineering in Plans, Specifications, and Estimates (PS&E) for numerous local, state, and federal agencies. His relevant experience includes horizontal/vertical alignment design, roadway widening and rehabilitation, signing & striping design, signal design, railroad at-grade crossing signal design, plan production, utility mapping, field verification/study, drafting, traffic impact analysis, technical writing, and project management. Glenn is familiar with the California MUTCD, Caltrans Standard Plans, AASHTO Green Book, and various city agency drafting/design standards. Glenn is proficient in drafting using AutoCAD Civil 3D, MicroStation, and various software.

#### Professional Credentials/Affiliations

- Bachelor of Science, Civil Engineering, California State University, Long Beach
- Professional Engineer in California # 94231

#### RELEVANT EXPERIENCE

- **Caltrans District 8, San Bernardino County Transportation Authority (SBCTA), City of Redlands - I-10 / University Street, Redlands, CA** – Design Engineer
- **City of Los Angeles, Complete Streets Program (TOS 38), Los Angeles, CA** – Design Engineer And Project Lead
- **City of Los Angeles, Los Angeles Riverway Project, Los Angeles, CA** – Project Lead and Design Engineer
- **City of Pasadena, Mountain Street Complete Streets, Pasadena, CA** – Project Lead and Design Engineer
- **City of Compton, Wilmington Avenue Safe Street Pedestrian/Bicycle Improvement Project, Compton, CA** – Design Engineer
- **City of Los Angeles, Glendale-Hyperion Complex of Bridges Improvement Project, Los Angeles, CA** – Design Engineer
- **City of Torrance, Crenshaw Boulevard Rehabilitation (182nd Street to Redondo Beach Boulevard), Torrance, CA** – Design Engineer



## COST PROPOSAL

Per the City's RFP, we have provide our cost proposal as a separate PDF attachment on PlanetBids.

## DISCLOSURE

Kimley-Horn does not have any past or current business or personal relationships with any current Costa Mesa elected/appointed officials, City employees, or family members of Costa Mesa officials/staff.

## SAMPLE PROFESSIONAL SERVICE AGREEMENT

Kimley-Horn has reviewed the sample Professional Services Agreement and would like to discuss the following modifications with the City that are congruent with previously negotiated terms.

### 1.0 **Services Provided by Consultant**

**1.2 Professional Practices.** All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. ~~Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.~~

**1.4 Warranty.** Consultant ~~warrants that it~~ shall ~~exercise the professional standard of care to~~ perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgements of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's ~~negligent~~ performance under this Agreement.

### 5.0 **Insurance**

#### 5.1 **Minimum Scope and Limits of Insurance.**

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. ~~Architects' and engineers' coverage shall be endorsed to include contractual liability.~~ If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

### 6.0 **General Provisions**

**6.9. Indemnification and Hold Harmless.** Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, ~~at Consultant's sole expense,~~ from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees ~~to the extent~~ arising out of the ~~negligent~~ performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall ~~apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall~~ be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, ~~and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable.~~ Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

## FORMS TO ACCOMPANY PROPOSAL

Per the City's RFP, we have included the following forms starting on the next page:

1. Vendor Application Form
2. Company Profile & References
3. Ex Parte Communications Certificate
4. Disclosure of Government Positions
5. Disqualifications Questionnaire
6. Bidder/Applicant/Contractor Campaign Contribution



**VENDOR APPLICATION FORM  
FOR  
RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS  
(FEDERAL PROJECT NO. HSIPL-5312(107))**

TYPE OF APPLICANT: ☐ NEW ☒ CURRENT VENDOR

Legal Contractual Name of Corporation: Kimley-Horn and Associates, Inc.

Contact Person for Agreement: Jean B. Fares, PE

Title: Senior Vice President E-Mail Address: Jean.Fares@kimley-horn.com

Business Telephone: 714.939.1030 Business Fax: N/A

Corporate Mailing Address: 1100 W. Town and Country Rd, Ste. 700

City, State and Zip Code: Orange, CA 92868

Contact Person for Proposals: Vivian Chong, PE

Title: Project Manager E-Mail Address: Vivian.Chong@kimley-horn.com

Business Telephone: 213.354.9396 Business Fax: N/A

Is your business: (check one)

☐ NON PROFIT CORPORATION ☒ FOR PROFIT CORPORATION

Is your business: (check one)

☒ CORPORATION ☐ LIMITED LIABILITY PARTNERSHIP  
☐ INDIVIDUAL ☐ SOLE PROPRIETORSHIP  
☐ PARTNERSHIP ☐ UNINCORPORATED ASSOCIATION

**Names & Titles of Corporate Board Members**

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
<u>Barry L. Barber, Chairman</u>	<u></u>	<u>919.677.2000</u>
<u>Steven E. Lefton, CEO, President</u>	<u></u>	<u>703.674.1300</u>
<u>Richard N. Cook, Senior Vice President, Secretary</u>	<u></u>	<u>919.677.2000</u>
<u>Tammy L. Flanagan, CFO, Senior Vice President</u>	<u></u>	<u>919.677.2000</u>
<u>David L. McEntee, Vice President, Treasurer, Assistant Secretary</u>	<u></u>	<u>919.677.2000</u>
<u></u>	<u></u>	<u></u>

Federal Tax Identification Number: 56-0885615

City of Costa Mesa Business License Number: 60170

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: January 31, 2025



## EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning informal **RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107))** at any time after August 27, 2024.



Signature

Date: September 19, 2024

Jean B. Fares, PE, Senior Vice President

Print

OR

I certify that Proposer or Proposer's representatives have communicated after August 27, 2024 with a City Councilmember concerning informal **RFP No. 25-04 SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107))**. A copy of all such communications is attached to this form for public distribution.

Signature

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

Print

## DISQUALIFICATION QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No X

If the answer is yes, explain the circumstances in the following space.

A handwritten signature in blue ink, appearing to read "Jean B. Fares", with a stylized flourish at the end.

Jean B. Fares, PE, Senior Vice  
President Kimley-Horn and Associates,  
Inc.

### **DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of Contractor currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

None.

A handwritten signature in blue ink, appearing to read "Jean B. Fares", with a stylized flourish at the end.

Jean B. Fares, PE, Senior Vice President  
September 19, 2024

## COMPANY PROFILE & REFERENCES

**Company Legal Name:** [Kimley-Horn and Associates, Inc.](#)

Company Legal Status (corporation, partnership, sole proprietor etc.): [Corporation](#)

Active licenses issued by the California State Contractor's License Board: [N/A](#)

Business Address: [1100 W. Town and Country Rd, Ste. 700, Orange, CA 92868](#)

Website Address: [www.kimley-horn.com](http://www.kimley-horn.com)

Telephone Number: [213.354.9402](#)

Facsimile Number: [N/A](#)

Email Address: [Vivian.Chong@kimley-horn.com](mailto:Vivian.Chong@kimley-horn.com)

Length of time the firm has been in business: [57 years](#)

Length of time at current location: [26 years](#)

Is your firm a sole proprietorship doing business under a different name: \_\_\_Yes ☒ No

If yes, please indicate sole proprietor's name and the name you are doing business under:

Federal Taxpayer ID Number: [56-0885615](#)

Regular Business Hours: [Monday - Thursday 7:30 a.m. - 5:30 p.m., Friday 7:30 a.m. - 11:30 a.m.](#)

Regular holidays and hours when business is closed: [Closed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day](#)

**Contact person in reference to this solicitation:** [Vivian Chong, PE](#)

Telephone Number: [213.354.9396](#)

Facsimile Number: [N/A](#)

Email Address: [Vivian.Chong@kimley-horn.com](mailto:Vivian.Chong@kimley-horn.com)

**Contact person for accounts payable:** [Mitchell Wong](#)

Telephone Number: [714.786.6307](#)

Facsimile Number: [N/A](#)

Email Address: [Mitchell.Wong@kimley-horn.com](mailto:Mitchell.Wong@kimley-horn.com)

**Name of Project Manager:** [Vivian Chong, PE](#)

Telephone Number: [213.354.9396](#)

Facsimile Number: [N/A](#)

Email Address: [Vivian.Chong@kimley-horn.com](mailto:Vivian.Chong@kimley-horn.com)

## **COMPANY PROFILE & REFERENCES (Continued)**

Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least three clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

### **Company Name: City of Anaheim**

**Telephone Number:** 714.765.4991

**Contact Name:** Rafael Cobian, City Traffic Engineer

**Contract Amount:** \$109,873

**Email:** rcobian@anaheim.net

**Address:** 200 S. Anaheim Boulevard, Anaheim, CA 92805

**Brief Contract Description:** City of Anaheim, Protected Left-Turn Signal Improvement Project at 4 Intersections (HSIPL-5055 (196)) The City selected Kimley-Horn to assist with the Protected Left Turn Signal Improvement project. The project includes traffic signal modifications to four existing intersections to provide protected left-turn phasing. These improvements were part of the HSIP Cycle 10 grant from Caltrans. The presence of a significant number of broadside collisions at these four intersections demonstrated a need to implement safety countermeasures. Kimley-Horn's scope of work includes project management, utility coordination, preliminary engineering, PS&E, and bid and construction support.

### **Company Name: City of Culver City**

**Telephone Number:** 310.253.5634

**Contact Name:** Andrew Maximous, Mobility and Traffic Engineering Manager

**Contract Amount:** \$54,285

**Email:** andrew.maximous@culvercity.org

**Address:** 9770 Culver Boulevard, Culver City, CA 90232

**Brief Contract Description:** City of Culver City, Signal Upgrade and Left Turn Phasing, Culver City, CA [HSIP] Kimley-Horn was selected by the City of Culver City to provide designs for 12 signalized intersections in the City. Our duties include field review and survey, utility research, ADA curb ramp design, and the preparation of construction drawings for traffic signal modification design and the installation of left-turn phasing at the intersections.

### **Company Name: City of Monterey Park**

**Telephone Number:** 626.307.1283

**Contact Name:** Anthony Bendezu, Civil Engineering Associate

**Contract Amount:** \$51,505

**Email:** abenedezu@montereypark.ca.gov

**Address:** 320 West Newmark Avenue, Monterey Park, CA 91754

**Brief Contract Description:** City of Monterey Park, Design Engineering Services for Various Signalized Intersections Along Garfield Avenue, HSIP Cycle 9, Monterey Park, CA [HSIP] Nine intersections along Garfield Avenue underwent improvements through HSIP Cycle 9 funding. Kimley-Horn worked with the City to upgrade vehicle signal heads and install retroreflective borders on backplates and countdown pedestrian heads. The team coordinated with Caltrans to submit all necessary documentation, such as Local Assistance Procedures Manuals (LAPM) forms, environmental categorical exemption documents, right-of-way forms, and request for authorization for construction.

**Company Name: City of West Covina**

**Telephone Number:** 626.939.8425

**Contact Name:** Okan Demirci, PE

**Contract Amount:** \$194,123

**Email:** okan.demirci@transtech.org

**Address:** 1415 North Santa Anita Avenue, South El Monte, CA 91733

**Brief Contract Description:** City of West Covina, Preliminary Engineering Phase Services, HSIP Cycle 10 Improvements, West Covina, CA [HSIP] Kimley-Horn was recently selected by the City of West Covina to provide design services for multiple traffic signals across the city. Preparation for this project included coordinating with local utility companies to obtain record base maps of utility lines in the area. Our team will coordinate with utility companies until the start of construction to facilitate adjustment and facility relocation. During the preliminary engineering phase, Kimley-Horn reviewed all available right-of-way maps, assessor parcel maps, easement information, as-built improvement plans, utility information, and survey information. Our team also conducted field investigations at each intersection location and prepared preliminary engineering plans to show tentative traffic signal improvements. Following City review and comments, our team will prepare 60%, 90%, and 100% complete PS&E construction documents to submit to the City for review. Once the project moves into the bidding phase, Kimley-Horn will assist the City staff with answering pre-bid questions and preparing responses to requests for information. Our team will also assist with coordination and support during the construction stages of the project. Finally, we will prepare updated traffic signal timing sheets for the intersections covered in the project and record drawing as-builts following completion of construction.

**Company Name: City of Santa Clarita**

**Telephone Number:** 661.259.2489

**Contact Name:** Cesar Romo, Traffic Signal System Administrator

**Contract Amount:** \$124,000

**Email:** cromo@santa-clarita.com

**Address:** 23920 Valencia Boulevard, Suite 300, Valencia, CA 91355

**Brief Contract Description:** City of Santa Clarita, Copper Hill Drive Traffic Signal and Interconnect Kimley-Horn completed design work for the City of Santa

Clarita for the intersection of Copper Hill Drive at Deer Springs Drive as well as a traffic signal interconnect system that allows for traffic signal coordination along Copper Hill Drive. Plans were developed to utilize as-built street improvements, striping, and traffic signal plans provided by the City and supplemented with findings from a detailed field review. Our staff coordinated with local utility companies during the design phase to identify design controls and considerations for plan preparation and approvals. The traffic signing/striping and traffic signal and interconnect plans were prepared with right-of-way, roadway features, and traffic control devices relevant to the design clearly identified. Throughout the design process, plans at the 30%, 60%, 90% and 100% stages were submitted to the City for review and approval. Once plans were prepared and approved, Kimley-Horn prepared an OPCE and technical provisions per Green Book and supplemented with the Caltrans Standard Specifications. Construction specifications were prepared to the specific project and in line with the City format. Finally, the Kimley-Horn team prepared an itemized construction bid schedule and OPCE.





**BIDDER/APPLICANT/CONTRACTOR CAMPAIGN CONTRIBUTION  
DISCLOSURE FORM**

Proposer/Consultant/Applicant is required to identify any campaign contribution or cumulative contributions greater than \$249 to any city council member in the twelve months prior to submitting an application, proposal, statement of qualifications or bid requiring approval by the City Council.

Date	Name of Donor	Company/Business Affiliation	Name of Recipient	Amount
N/A				

Except as described above, I/we have not made any campaign contribution in the amount of \$250 or more to any Costa Mesa City Council Member in the twelve months preceding this Application/Proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

A blue ink signature of Jean B. Fares, written in a cursive style.

Jean B. Fares, PE,  
Senior Vice President

Bidder/Applicant/Proposer

September 19, 2024

Date

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: City of Costa Mesa 2. Contract DBE Goal: 20%

3. Project Description: SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS

4. Project Location: Costa Mesa, CA

5. Consultant's Name: Kimley-Horn and Associates, Inc. 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Environmental Documentation and Caltrans LAPM documentation	36060	Advanced Avant-Garde Corporation 3670 W Temple Ave, Ste. 278 Pomona, CA 91768 Ana Marie Lenoue / 909-979-6586	8.68%
Traffic Signal	49778	Architectural Engineering Technologies, DBA AET & Associates, Inc. 5132 Stone Canyon Avenue Yorba Linda, CA 92886 Uyen Pham / 714-837-2177	7.31%
Traffic Signal Planning	28897	LIN Consulting, Inc. 21660 Copley Dr. # 270 Diamond Bar, CA 91765 Denwun Lin / 909-396-6850	10.61%
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>26.60%</b>
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature	22. Date	12. Preparer's Signature	13. Date
23. Local Agency Representative's Name	24. Phone	14. Preparer's Name	15. Phone
25. Local Agency Representative's Title		16. Preparer's Title	

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

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

[Print](#)

### Business & Contact Information

BUSINESS NAME	Architectural Engineering Technologies, DBA <b>AET &amp; Associates, Inc.</b>
OWNER	Ms. Uyen Pham
ADDRESS	5132 Stone Canyon Avenue Yorba Linda, CA 92886 <a href="#">[map]</a>
PHONE	714-837-2177
EMAIL	<a href="mailto:upham@aetandassociates.com">upham@aetandassociates.com</a>
WEBSITE	<a href="http://www.aetandassociates.com">http://www.aetandassociates.com</a>
ETHNICITY	Asian-Pacific American
GENDER	Female
COUNTY	Orange (CA)

### Certification Information

CERTIFYING AGENCY	Los Angeles County Metropolitan Transportation Authority
CERTIFICATION TYPE	DBE - Disadvantaged Business Enterprise
CERTIFIED BUSINESS DESCRIPTION	Planning, design, intellectual transportation system, CAD, traffic systems

### Commodity Codes

Code	Description
NAICS 541430	Graphic design services
NAICS 541340	Drafting services
NAICS 541490	Other Specialized Design Services
NAICS 541611	Administrative Management and General Management Consulting Services

### Additional Information

WORK DISTRICTS/REGIONS

**All work districts/regions**

CUCP PUBLIC DIRECTORY  
CERTIFICATION NUMBER

**49778**

This profile was generated on 9/19/2024

**Certified Profile**CLOSE WINDOW [Print](#)**Business & Contact Information**

BUSINESS NAME	<b>ADVANCED AVANT-GARDE CORPORATION</b>
OWNER	<b>Ms. Ana Marie Lenoue</b>
ADDRESS	<b>3670 W TEMPLE AVE, STE. 278 POMONA, CA 91768 <a href="#">[map]</a></b>
PHONE	<b>909-979-6586</b>
FAX	<b>909-979-6580</b>
EMAIL	<b><a href="mailto:alenoue@avant-garde-inc.com">alenoue@avant-garde-inc.com</a></b>
WEBSITE	<b><a href="http://www.agi.com.co">http://www.agi.com.co</a></b>
ETHNICITY	<b>Hispanic American</b>
GENDER	<b>Female</b>
COUNTY	<b>Los Angeles (CA)</b>

**Certification Information**

CERTIFYING AGENCY	<b>City of Los Angeles</b>
CERTIFICATION TYPE	<b>DBE - Disadvantaged Business Enterprise</b>
CERTIFIED BUSINESS DESCRIPTION	

**Commodity Codes**

Code	Description
CA WCC I7336	COMMERICAL ART AND GRAPHIC DESIGN
CA WCC I8740	MANAGEMENT & PUBLIC RELATIONS
NAICS 541430	Graphic design services
NAICS 541611	Administrative Management and General Management Consulting Services
NAICS 541613	Marketing consulting services

**Additional Information**

WORK DISTRICTS/REGIONS	<b>Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Ventura</b>
CUCP PUBLIC DIRECTORY CERTIFICATION NUMBER	<b>36060</b>

This profile was generated on 9/12/2024

**Certified Profile**CLOSE WINDOW [Print](#)**Business & Contact Information**

BUSINESS NAME	<b>LIN Consulting, Inc.</b>
OWNER	<b>Mr. Denwun Lin</b>
ADDRESS	<b>21660 COPLEY DR. # 270 DIAMOND BAR, CA 91765</b> <a href="#">[map]</a>
PHONE	<b>909-396-6850</b>
FAX	<b>909-396-8150</b>
EMAIL	<a href="mailto:DLIN@LINCONSULTING.COM">DLIN@LINCONSULTING.COM</a>
WEBSITE	<a href="http://www.linconsulting.com">http://www.linconsulting.com</a>
ETHNICITY	<b>Asian-Pacific American</b>
GENDER	<b>Male</b>
COUNTY	<b>Los Angeles (CA)</b>

**Certification Information**

CERTIFYING AGENCY	<b>Los Angeles County Metropolitan Transportation Authority</b>
CERTIFICATION TYPE	<b>DBE - Disadvantaged Business Enterprise</b>
CERTIFIED BUSINESS DESCRIPTION	<b>Civil and traffic engineering consulting</b>

**Commodity Codes**

Code	Description
NAICS 541330	Engineering services

**Additional Information**

WORK DISTRICTS/REGIONS	<b>Los Angeles</b>
CUCP PUBLIC DIRECTORY CERTIFICATION NUMBER	<b>28897</b>



**EXHIBIT C**

**CONSULTANT'S COST PROPOSAL**

## Cost Proposal

September 19, 2024

Costa Mesa City Hall  
77 Fair Drive  
Costa Mesa, CA 92626

» 1100 W Town & Country Road  
Suite 700  
Orange, CA 92868  
TEL 714.939.1030

### RE: COST PROPOSAL FOR SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS (FEDERAL PROJECT NO. HSIPL-5312(107)) – RFP No. 25-04

Dear Members of the Selection Committee:

As instructed by the City's RFP, we have provided our cost proposal.

We welcome the opportunity to discuss our fee with the City and are flexible to adjustments and refinements as necessary to better accommodate your needs on this project.

Thank you for considering our proposal. Kimley-Horn is confident that no other consultant matches our qualifications and the unique knowledge of the City that we bring. We look forward to the opportunity to work on this project. Should you have any questions related to our proposal, please contact project manager **Jean Fares, PE** directly at [jean.fares@kimley-horn.com](mailto:jean.fares@kimley-horn.com), 818.970.2048, or at the address listed above.

Sincerely,  
KIMLEY-HORN AND ASSOCIATES, INC.



Jean Fares, PE\*  
Project Manager/Senior Vice President

*\*Jean Fares is authorized by Kimley-Horn to bind the firm to the terms of the proposal.*

**CITY OF COSTA MESA**  
**Signal Modernization for Systemic Safety Improvements**  
**(Federal Project No. HSIPL-5312(107))**

		Name	Kimley-Horn and Associates, Inc.							
			Darryl dePencier	Jason Melchor	Jean Fares	Professional I	Analyst II	Analyst I	TOTAL HOURS	TOTAL COST
196.54%	Overhead%	Category/Title	Principal-in-Charge	QC/QA Manager	Project Manager					
195.57%	Overhead% w/o FCCM	Direct Rate	\$76.54	\$97.60	\$125.64	\$66.80	\$55.08	\$47.65		
10%	Fee%	Billing Rate	\$249.59	\$318.27	\$409.71	\$217.83	\$179.61	\$155.39		
Phase 1	Detailed Citywide Traffic Signal Inventory				1	6	80	80	167	\$ 28,516.66
	Kick Off Meeting				1	1			2	\$ 627.54
	Field Visit						60	60	120	\$ 20,099.97
	Develop Field Data Table						20	20	40	\$ 6,699.99
	Invoice Coordination					5			5	\$ 1,089.16
Phase 2	Preliminary Engineering			10	7	21	40	41	119	\$ 24,180.52
	Progress Meeting				1	1		1	3	\$ 782.93
	Traffic Signal Inventory Table			5	5	10	20	20	60	\$ 12,518.21
	Preliminary Design Plans (4 Sheets)			5	1	10	20	20	56	\$ 10,879.38
Phase 3	Environmental Approval									\$ -
	Environmental Clearance (PES) - Avant Garde									\$ -
	Caltrans LAPM Forms for PSE Certification and E-76 Construction Authorization - Avant Garde									\$ -
	Invoice Coordination - Avant Garde									
Phase 4	Final Design Plans, Specifications, and Estimates (PS&E)		20	36	28	113	340	303	840	\$ 160,687.13
4.1	60% PS&E Package		10	12	8	41	120	121	312	\$ 58,879.32
	Progress Meeting				1	1		1	3	\$ 782.93
	60% Plans		10	10	5	40	100	100	265	\$ 49,940.45
	60% Estimate			2	2		20	20	44	\$ 8,155.95
4.2	90% PS&E Package		5	12	10	41	120	101	289	\$ 55,343.06
	Progress Meeting				1	1		1	3	\$ 782.93
	90% Plans		5	5	5	20	80	80	195	\$ 36,044.48
	90% Estimate			2	2		20	20	44	\$ 8,155.95
	90% Special Provisions (Greenbook)			5	2	20	20		47	\$ 10,359.71
4.3	100% PS&E Package		5	12	10	31	100	81	239	\$ 46,464.75
	Progress Meeting				1	1		1	3	\$ 782.93
	100% Plans		5	5	5	10	60	60	145	\$ 27,166.16
	100% Estimate			2	2		20	20	44	\$ 8,155.95
	100% Special Provisions (Greenbook)			5	2	20	20		47	\$ 10,359.71
4.4	Leading Pedestrian Interval (LPI) Timing Sheets - AET									\$ -
4.5	Right of Way Clearance - Avant Garde									\$ -
4.6	Request for Authorization to Proceed with Construction (RFA for CON) - Avant Garde									\$ -
4.7	Processing and Approvals									\$ -
	TOTAL HOURS		20	46	36	140	460	424	1,126	
	Subtotal Labor:		\$4,991.89	\$14,640.45	\$14,749.50	\$30,496.59	\$82,622.54	\$65,883.33		\$ 213,384.31
	Other Direct Costs									\$ 87,345.44
	Labor Escalation									\$ 5,345.81
	Travel/Mileage									\$ 2,000.00
DBE	AET & Associates, Inc.									\$ 21,990.81
DBE	Avant Garde Inc.									\$ 26,095.11
DBE	LIN Consulting, Inc.									\$ 31,913.71
	TOTAL COST:									\$ 300,729.75

**CITY OF COSTA MESA**  
**Signal Modernization for Systemic Safety Improvements**  
**(Federal Project No. HSIPL-5312(107))**

		AET & Associates, Inc.		Total Hours	Total Costs
		Sr. Engineer III	Sr. Engineer I		
120.00%	Overhead %	Direct Rate	Billing Rate		
10%	Fee%				
<b>Phase 1</b>	<b>Detailed Citywide Traffic Signal Inventory</b>				\$ -
<b>Phase 2</b>	<b>Preliminary Engineering</b>				\$ -
<b>Phase 3</b>	<b>Environmental Approval</b>				\$ -
<b>Phase 4</b>	<b>Final Design Plans, Specifications, and Estimates (PS&amp;E)</b>	<b>20</b>	<b>80</b>	<b>100</b>	<b>\$ 21,044.00</b>
4.1	60% PS&E Package				\$ -
	Progress Meeting				\$ -
	60% Plans				\$ -
	60% Estimate				\$ -
4.2	90% PS&E Package				\$ -
	Progress Meeting				\$ -
	90% Plans				\$ -
	90% Estimate				\$ -
	90% Special Provisions (Greenbook)				\$ -
4.3	100% PS&E Package				\$ -
	Progress Meeting				\$ -
	100% Plans				\$ -
	100% Estimate				\$ -
	100% Special Provisions (Greenbook)				\$ -
4.4	Leading Pedestrian Interval (LPI) Timing Sheets	20	80	100	\$ 21,044.00
4.5	Right of Way Clearance - Avant Garde				\$ -
4.6	Request for Authorization to Proceed with Construction (RFA for CON)				\$ -
4.7	Processing and Approvals				\$ -
	<b>TOTAL HOURS</b>	<b>20</b>	<b>80</b>	<b>100</b>	
	<b>Subtotal Labor:</b>	<b>\$4,634.40</b>	<b>\$16,409.60</b>		<b>\$ 21,044.00</b>
	<b>Other Direct Costs</b>				<b>\$ 946.98</b>
	Labor Escalation				\$ 946.98
	<b>TOTAL COST:</b>				<b>\$ 21,990.98</b>

**CITY OF COSTA MESA**  
**Signal Modernization for Systemic Safety Improvements**  
**(Federal Project No. HSIPL-5312(107))**

120.00% Overhead % 10% Fee%		Name	Avant Garde Inc.				Total Hours	Total Costs
			Lisette Montoya	Nadine El Sankari	Keith LeNoue	Alyssa Maldonado		
			Program Director	Program Manager	Program Manager	Program Assistant		
			Direct Rate					
			Billing Rate					
Phase 1	Detailed Citywide Traffic Signal Inventory						\$ -	
Phase 2	Preliminary Engineering						\$ -	
Phase 3	Environmental Approval	10	48	68	30	156	\$ 17,071.89	
	Task Management	4	16	38	18	76	\$ 7,810.79	
	Environmental Clearance (PES)	2		14	6	22	\$ 2,290.05	
	Caltrans LAPM Forms for PSE Certification and E-76 Construction Authorization	4	32	16	6	58	\$ 6,971.05	
	Invoice Coordination						\$ -	
Phase 4	Plans, Specifications, and Estimate (PS&E) and LPI Timing Sheets	4	32	26	14	76	\$ 8,386.75	
4.1	60% PS&E Package						\$ -	
	Progress Meeting						\$ -	
	60% Plans						\$ -	
	60% Estimate						\$ -	
4.2	90% PS&E Package						\$ -	
	Progress Meeting						\$ -	
	90% Plans						\$ -	
	90% Estimate						\$ -	
	90% Special Provisions (Greenbook)						\$ -	
4.3	100% PS&E Package						\$ -	
	Progress Meeting						\$ -	
	100% Plans						\$ -	
	100% Estimate						\$ -	
	100% Special Provisions (Greenbook)						\$ -	
4.4	Leading Pedestrian Interval (LPI) Timing Sheets						\$ -	
4.5	Right of Way Clearance	2		14	6	22	\$ 2,290.05	
4.6	Request for Authorization to Proceed with Construction (RFA for CON)	2	32	12	8	54	\$ 6,096.71	
4.7	Processing and Approvals						\$ -	
	TOTAL HOURS	14	80	94	44	232		
	Subtotal Labor:	\$4,358.66	\$9,680.00	\$8,757.98	\$2,662.00		\$ 25,458.64	
	Other Direct Costs						\$ 636.47	
	Labor Escalation						\$ 636.47	
	TOTAL COST:						\$ 26,095.11	

156.74% Overhead % 10% Fee%		Name	LIN Consulting, Inc.					Total Hours	Total Costs
			William Sun	Tracy Moriya	Ryan Woo	Steven Hak	Samuel Adan		
			Principal	Project Manager	Assist Proj. Manager	Project Engineer	Assistant Engineer		
			Direct Rate						
Billing Rate									
Phase 1	Detailed Citywide Traffic Signal Inventory					20	20	40	\$ 3,840.83
	Kick Off Meeting								\$ -
	Field Visit					20	20	40	\$ 3,840.83
	Develop Field Data Table								\$ -
	Invoice Coordination								\$ -
Phase 2	Preliminary Engineering								\$ -
Phase 3	Environmental Approval								\$ -
Phase 4	Plans, Specifications, and Estimate (PS&E) and LPI Timing Sheets		8	28	36	74	62	208	\$ 27,230.36
4.1	60% PS&E Package		5	17	24	44	40	130	\$ 16,978.73
	Progress Meeting								\$ -
	60% Plans		5	16	24	40	40	125	\$ 16,303.76
	60% Estimate			1		4		5	\$ 674.97
4.2	90% PS&E Package		2	7	8	16	12	45	\$ 6,097.32
	Progress Meeting								\$ -
	90% Plans		2	6	8	12	12	40	\$ 5,422.35
	90% Estimate			1		4		5	\$ 674.97
	90% Special Provisions (Greenbook)								\$ -
4.3	100% PS&E Package		1	4	4	14	10	33	\$ 4,154.31
	Progress Meeting								\$ -
	100% Plans		1	2	4	10	10	27	\$ 3,256.23
	100% Estimate			2		4		6	\$ 898.08
	100% Special Provisions (Greenbook)								\$ -
4.4	Leading Pedestrian Interval (LPI) Timing Sheets								\$ -
4.5	Right of Way Clearance								\$ -
4.6	Request for Authorization to Proceed with Construction (RFA for CON)								\$ -
4.7	Processing and Approvals								\$ -
	TOTAL HOURS		8	28	36	94	82	248	
	Subtotal Labor:		\$2,281.91	\$6,247.00	\$5,439.29	\$10,618.77	\$6,484.23		\$ 31,071.19
	Other Direct Costs								\$ 842.52
	Labor Escalation								\$ 621.42
	Mileage								\$ 221.10
	TOTAL COST:								\$ 31,913.71

**COST PROPOSAL 1**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☒ Prime Consultant    ☐ Subconsultant    ☐ 2nd Tier Subconsultant
Consultant Kimley-Horn and Associates, Inc.Project No. HSIPL-5312(107)

Contract No. \_\_\_\_\_

Date 10/9/2024**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal-in-Charge	Darryl dePencier	20	\$76.54	\$ 1,530.80
QC/QA Manager	Jason Melchor	46	\$97.60	\$ 4,489.60
Project Manager	Jean Fares	36	\$125.64	\$ 4,523.04
Sr. Professional III	TBD	0	\$130.46	\$ -
Sr. Professional II	TBD	0	\$105.66	\$ -
Sr. Professional I	TBD	0	\$94.09	\$ -
Professional II	TBD	0	\$78.88	\$ -
Professional I	TBD	140	\$66.80	\$ 9,352.00
Analyst II	TBD	460	\$55.08	\$ 25,338.33
Analyst I	TBD	424	\$47.65	\$ 20,205.42
Technical Support	TBD	0	\$29.33	\$ -
Project Support	TBD	0	\$42.24	\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs	\$ 65,439.19
b) Anticipated Salary Increases (see Anticipated Salary Increases page for calculation)	\$ 1,635.98
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$ 67,075.17</b>

**INDIRECT COSTS**

d) Fringe Benefits (Rate: <u>0.00%</u> )	e) Total Fringe Benefits [(c) x (d)]	\$ -
f) FCCM (Rate: <u>0.97%</u> )	g) FCCM [(c) x (f)]	\$ 650.63
h) Overhead (Rate: <u>195.57%</u> )	i) Overhead [(c) x (h)]	\$ 131,178.91

**j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 131,829.54**

**FIXED FEE**                      **k) TOTAL FIXED FEE [(c) + (e) + (i)\* fixed fee 10%] \$ 19,825.41**

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE**

Description of Item	Quantity	Unit	Unit Cost	Total
Travel/Mileage		LS	\$0.00	\$ 2,000.00
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -

**l) TOTAL OTHER DIRECT COSTS \$ 2,000.00**

**m) SUBCONSULTANTS' COSTS**

Subconsultant 1:	AET & Associates, Inc.	\$ 21,990.81
Subconsultant 2:	Avant Garde Inc.	\$ 26,095.11
Subconsultant 3:	LIN Consulting, Inc.	\$ 31,913.71
Subconsultant 4:		\$ -

**(m) TOTAL SUBCONSULTANTS' COSTS \$ 79,999.63**

**(n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ 81,999.63**

**TOTAL COST [(c) + (j) + (k) + (n)] \$ 300,729.75**

## COST PROPOSAL 1

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
**(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)**

**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$ 65,439.19	/ 1126	= \$58.12	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all periods (Increase the Average hourly rate for a period by proposed escalation %)**

	Avg Hourly Rate	Proposed Escalation			
Year 1	\$58.12	+	5%	=	\$61.02 Year 2 Avg Hourly Rate
Year 2	\$61.02	+	5%	=	\$64.07 Year 3 Avg Hourly Rate
Year 3	\$64.07	+	5%	=	\$67.28 Year 4 Avg Hourly Rate
Year 4	\$67.28	+	5%	=	\$70.64 Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each period by total h**

	Estimated % Completed Each Period	Total Hours per Cost Proposal	Total Hours per Period
Year 1	50.00%	* 1126	= 563 Estimated Hours Year 1
Year 2	50.00%	* 1126	= 563 Estimated Hours Year 2
Year 3	0.00%	* 1126	= 0 Estimated Hours Year 3
Year 4	0.00%	* 1126	= 0 Estimated Hours Year 4
Year 5	0.00%	* 1126	= 0 Estimated Hours Year 5
Total	100%	Total	= 1126

**4. Calculate Total Costs including Escalation (Multiply average hourly rate by the number of hours)**

	Avg Hourly Rate (calculated above)	Estimated Hours (calculated above)	Cost Per Period
Year 1	\$58.12	* 563	= \$32,719.60 Estimated Hours Year 1
Year 2	\$61.02	* 563	= \$34,355.58 Estimated Hours Year 2
Year 3	\$64.07	* 0	= \$0.00 Estimated Hours Year 3
Year 4	\$67.28	* 0	= \$0.00 Estimated Hours Year 4
Year 5	\$70.64	* 0	= \$0.00 Estimated Hours Year 5
Total Direct Labor Cost with Escalation			= \$67,075.17
Direct Labor Subtotal before escalation			= \$65,439.19
Estimated total of Direct Labor Salary			= <b>\$1,635.98</b> Transfer to Page 1

Period 1 = Contract inception through 6/30/25    Period 2 = 7/1/25 through 6/30/26

Period 3 = 7/1/26 through 6/30/27    Period 4 = 7/1/27 through 6/30/28    Period 5 = 7/1/28 through 6/30/29



## COST PROPOSAL 1

**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

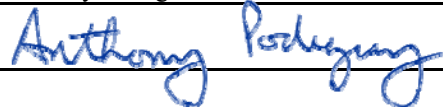
1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) -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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost

**Prime Consultant or Subconsultant Certifying:**

Name: Anthony Podegracz Title\*: Vice President

Signature:  Date of Certification (mm/dd/yyyy): 10/9/2024

Email: anthony.podegracz@kimley-horn.com Phone Number: 714-939-1030

Address: 1100 W Town & Country Road, Suite 700, Orange, CA 92868

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

List services the consultant is providing under the proposed contract:

Engineering Services



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

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

Consultant's Full Legal Name: Kimley-Horn and Associates, Inc.

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

### Indirect Cost Rate (ICR):

Combined Rate: \_\_\_\_\_ Or

Home Office Rate: 195.57 and Field Office Rate (if applicable): 174.12

Facilities Capital Cost of Money (if applicable): 0.97

**Fiscal Period:** 01/01/2023 - 12/31/2023

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

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

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

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

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

Our financial management system has the following attributes:

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

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

### Cost Reimbursements on Contracts:

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

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

### All A&E Contract Information:

- Total participation amount 250,131,769.00 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 50
- Years of consultant's experience with 48 CFR Part 31 is 25
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☒

Local Govt ICR Audit ☐

Caltrans ICR Audit ☐

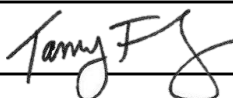
CPA ICR Audit ☒

Federal Govt ICR Audit ☐

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

Name:\*\* Tammy Flanagan

Title:\*\* Chief Financial Officer

Signature: 

Date: 05/20/2024

Phone:\*\* (919) 677-2016

Email:\*\* tammy.flanagan@kimley-horn.com

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

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

**COST PROPOSAL 1**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐ Prime Consultant☒ Subconsultant☐ 2nd Tier SubconsultantConsultant AET & Associates, Inc.Project No. HSIPL-5312(107)

Contract No. \_\_\_\_\_

Date 10/9/2024**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Sr. Engineer III	TBD	20	\$95.75	\$ 1,915.00
Sr. Engineer I	TBD	80	\$84.76	\$ 6,780.80
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs

\$ 8,695.80

b) Anticipated Salary Increases (see Anticipated Salary Increases page for calculations)

\$ 391.31

**c) Total Direct Labor Costs [(a) + (b)] \$ 9,087.11****INDIRECT COSTS**d) Fringe Benefits (Rate: 0.00%)

e) Total Fringe Benefits [(c) x (d)] \$ -

f) Overhead (Rate: 120.00%)

g) Overhead [(c) x (f)] \$ 10,904.53

h) General and Administrative (Rate: 0.00%)

i) Gen &amp; Admin [(c) x (h)] \$ -

**j) Total Indirect Costs [(e) + (g) + (i)] \$ 10,904.53****FIXED FEE****k) TOTAL FIXED FEE [(c) + (j)]\* fixed fee 10% ] \$ 1,999.16****l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -

**l) TOTAL OTHER DIRECT COSTS \$ -****m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$
Subconsultant 2:	\$
Subconsultant 3:	\$
Subconsultant 4:	\$
<b>(m) TOTAL SUBCONSULTANTS' COSTS</b>	<b>\$ -</b>

**(n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ -****TOTAL COST [(c) + (j) + (k) + (n)] \$ 21,990.81**

## COST PROPOSAL 1

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$ 8,695.80	/ 100	= \$86.96	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all periods (Increase the Average hourly rate for a period by proposed escalation %)**

Avg Hourly Rate	Proposed Escalation		
Year 1 \$86.96	+ 5%	= \$91.31	Year 2 Avg Hourly
Year 2 \$91.31	+ 5%	= \$95.87	Year 3 Avg Hourly
Year 3 \$95.87	+ 5%	= \$100.66	Year 4 Avg Hourly Rate
Year 4 \$100.66	+ 5%	= \$105.70	Year 5 Avg Hourly Rate

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

Estimated % Completed Each Period	Total Hours per Cost Proposal	Total Hours per Period	
Year 1 10.00%	* 100	= 10	Estimated Hours Year 1
Year 2 90.00%	* 100	= 90	Estimated Hours Year 2
Year 3 0.00%	* 100	= 0	Estimated Hours Year 3
Year 4 0.00%	* 100	= 0	Estimated Hours Year 4
Year 5 0.00%	* 100	= 0	Estimated Hours Year 5
Total 100%	Total	= 100	

**4. Calculate Total Costs including Escalation (Multiply average hourly rate by the number of hours)**

Avg Hourly Rate (calculated above)	Estimated Hours (calculated above)	Cost Per Period	
Year 1 \$86.96	* 10	= \$869.58	Estimated Hours Year 1
Year 2 \$91.31	* 90	= \$8,217.53	Estimated Hours Year 2
Year 3 \$95.87	* 0	= \$0.00	Estimated Hours Year 3
Year 4 \$100.66	* 0	= \$0.00	Estimated Hours Year 4
Year 5 \$105.70	* 0	= \$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation		= \$9,087.11	
Direct Labor Subtotal before escalation		= \$8,695.80	
Estimated total of Direct Labor Salary Increase		= <b>\$391.31</b>	Transfer to Page 1

## COST PROPOSAL 1

**Certification of Direct Costs:**

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

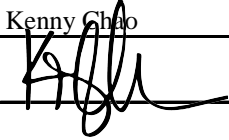
1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) -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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Kenny Chao Title\*: Principal

Signature:  Date of Certification (mm/dd/yyyy): 10/9/2024

Email: [kchao@aetandassociates.com](mailto:kchao@aetandassociates.com) Phone Number: 714.982.0398

Address: 18340 Yorba Linda Blvd., Suite 107, Yorba Linda, CA 92886

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

List services the consultant is providing under the proposed contract:

Review of 49 timing sheets to implement LPI

# California Safe Harbor Indirect Cost Rate Program

## Consultant Firm Certification of Eligibility and Certification of Financial Management System

Consultant Firm Name AET & Associates, Inc.

Local Agency (if applicable) \_\_\_\_\_

Contract Number / Federal Project Number HSIPL-5312(107)

Contract Total \$ 21,990.95

For Subconsultant Firms – estimated % of work to be performed 7.31 %

Safe Harbor Indirect Cost Rate (SHR): **Home: 120% and/or Field: 90%**

Field SHR will be utilized for contracts where the work deliverables are not completed from the consultant offices (i.e. Construction Inspection, Material Testing, Sources Inspection, others).

### Consultant Firm Certification of Eligibility

I, the undersigned, certify that I am eligible to use the Safe Harbor indirect cost rate as I:

1. Am not a Prime Consultant Firm on a Caltrans contract > \$3.5M, or Local Government contract > \$1M, regardless of the participation amount.
2. Have not used SHR for more than three (3) years since entering the program on a state or federally funded contract.

AND

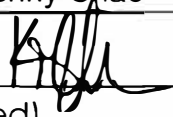
1. Do not have relevant contract cost history to use as a base for developing a Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31 compliant ICR.
2. Do not have a previously accepted ICR by a cognizant agency, or with an audited/accepted actual ICR, and do not have an existing contract with a provisional rate.

### Certification of Financial Management System

I, the undersigned, certify that our financial management system in place for this contract and moving forward meets the standards for the Safe Harbor indirect cost rate requirements and financial reporting, accounting records, internal and budget control as set forth in 2 CFR 200, Subpart D. These standards require consulting firms have an accounting system

# California Safe Harbor Indirect Cost Rate Program

adequate to accumulate, and track allowable, allocable, and reasonable direct labor and other direct costs by contract; segregate indirect costs and remove unallowable costs.

Print Name Kenny Chao  
Signature   
(Electronic Signature Allowed)  
Title Principal  
Date Completed 10/09/2024

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

## Definition of Terms

Direct Cost is any cost that is identified specifically with a particular cost objective. Direct costs are not limited to items that are incorporated in the end products as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified with other final cost objectives of the contractor are direct costs of those objectives, 48 CFR 31.202.

Indirect or overhead cost is any cost that is not directly identified with a single final cost objective but is identified with two or more final cost objectives or with at least one intermediate cost objective, 48 CFR 31. 203.

## References

Title 48 Code of Federal Regulations (CFR) Part 31 -Federal cost principles.  
Title 48 CFR Chapter 99, Subchapter B - Procurement Practices and Cost Accounting Standards.  
Title is 2 CFR 200 Subpart D, Standards for Financial and Program Management.  
Title 23 United States Code (U.S.C.), Chapter 1, Section 112 - Letting of Contracts.  
Title 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services.  
American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit & Accounting Guide (2016 Edition).



# California Safe Harbor Indirect Cost Rate Program

## **Caltrans Contract**

If participating on a Caltrans Contract, also attach a completed copy of the following Safe Harbor Indirect Cost Rate Questionnaire for Evaluating Consultant Firm's Financial Management System.

# California Safe Harbor Indirect Cost Rate Program

## Questionnaire for Evaluating Consultant Firm's Financial Management System

Consultant Firm Name AET & Associates, Inc.

Firm Headquarters Address 18340 Yorba Linda Blvd., Suite 107

Yorba Linda, CA 92886

### Accounting Records

- Location where Accounting records are held 18340 Yorba Linda Blvd., Ste. 107  
Yorba Linda, CA 92886
- Name and Title Kenny Chao, Principal
- Email and Phone kchao@aetandassociates.com, (424) 392-9188
- Mailing Address 18340 Yorba Linda Blvd., Ste. 107, Yorba Linda, CA 92886

To be eligible for Safe Harbor indirect cost rate (SHR), the Consultant Firm's financial management system must be adequate to accumulate and track direct labor and other direct costs by contract, segregate indirect costs, and remove unallowable costs in accordance with 48 CFR 31 for the different business segments.

### Instructions

1. Answer all questions and provide an explanation and additional supporting documentation where requested.
2. If additional space is required, please attach a separate sheet and refer to items being answered by number.

Has the Firm developed an indirect cost rate in the past? Yes ☐ No ☒

If "Yes", you are NOT ELIGIBLE to use the SHR.

DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an ICR Schedule.

Is the Firm a Prime Consultant Firm on a Caltrans contract > \$3.5M Or Local Government contract > \$1M, regardless of the participation Amount? Yes ☐ No ☒

If "Yes", you are NOT ELIGIBLE to use the SHR.

DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an AUDITED ICR Report.

# California Safe Harbor Indirect Cost Rate Program

1. What form of business entity is the Firm?

Sole Proprietorship ☐ Partnership ☐ C Corporation ☐ S Corporation ☒

Other

2. What types of services will the Firm provide for this contract? (Select all that apply.)

Architectural and Engineering Services ☒ Program Management ☐

Preliminary Engineering ☐ Design Engineering ☐

Surveying ☐ Feasibility Studies ☐

Mapping or Architectural Related Services ☐ Other

3. Does the Firm have prior government contracting experience? Yes ☒ No ☐

4. Does the general ledger contain separate direct and indirect accounts for the following?

Labor Yes ☐ No ☒ Non-Labor Yes ☐ No ☒

5. Does the company have a system in place to identify and remove from the indirect cost pools all unallowable cost? Yes ☒ No ☐

6. Does the firm assign a unique identification/project number in your accounting system for each contract/project?

Yes ☒ No ☐

7. Is indirect and direct labor separated by contract/project/cost objectives on employee timesheets with unique reporting codes?

Yes ☐ No ☒

# California Safe Harbor Indirect Cost Rate Program

8. Do you have written policies on the following cost categories?

Accounting Yes X No      Overtime Yes X No     

Billing Yes X No      Direct/Indirect Expenses Yes      No X

Timesheet Preparation Yes X No      Prevailing Wage Yes      No X

Bonus Yes X No     

9. What types of employee status will the Firm provide for this contract?

Non-exempt ☐ Exempt-salaried ☒ Exempt-hourly ☐ Contract Employee ☐

Other \_\_\_\_\_

10. Does the Firm pay overtime for exempt employees?

Yes \_\_\_\_\_ No X

11. Besides labor, does the Firm normally bill/invoice the following as direct contract/project costs? (Select all that apply)

Vehicle XShipping X

Computer/CADD \_\_\_\_\_

Lab \_\_\_\_\_

Printing X

Travel X

Specialty Equipment \_\_\_\_\_  
(List below)

Other (List below) \_\_\_\_\_

12. Are mileage logs maintained for all vehicles? If no, please explain below.

Explanation No company vehicle

Where is the vehicle stored after work? Not Applicable

Does employee use vehicle for personal use? Yes \_\_\_\_\_ No \_\_\_\_\_

What is the recovery/billing rate used for Firm or personal vehicle mileage reimbursement?

\$ 0.655 per mile

# California Safe Harbor Indirect Cost Rate Program

I certify that to the best of my knowledge and belief the responses to this questionnaire are accurate.

Print Name Kenny Chao

Signature   
(Electronic Signature Allowed)

Title Principal

Date Completed 10/09/2024

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

**COST PROPOSAL 1**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐ Prime Consultant☒ Subconsultant☐ 2nd Tier SubconsultantConsultant Avant Garde Inc.Project No. HSIPL-5312(107)

Contract No. \_\_\_\_\_

Date 10/9/2024**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Program Director	Lisette Montoya	14	\$128.65	\$ 1,801.10
Program Manager	Nadine El Sankari	80	\$50.00	\$ 4,000.00
Program Manager	Keith LeNoue	94	\$38.50	\$ 3,619.00
Program Assistant	Alyssa Maldonado	44	\$25.00	\$ 1,100.00
				\$ -
				\$ -
				\$ -
				\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs

\$ 10,520.10

b) Anticipated Salary Increases (see Anticipated Salary Increases page for calculations)

\$ 263.00

**c) Total Direct Labor Costs [(a) + (b)] \$ 10,783.10****INDIRECT COSTS**

d) Fringe Benefits (Rate: \_\_\_\_\_)

e) Total Fringe Benefits [(c) x (d)] \$ -

f) Overhead (Rate: 120.00%)

g) Overhead [(c) x (f)] \$ 12,939.72

h) General and Administrative (Rate: \_\_\_\_\_)

i) Gen &amp; Admin [(c) x (h)] \$ -

**j) Total Indirect Costs [(e) + (g) + (i)] \$ 12,939.72****FIXED FEE****k) TOTAL FIXED FEE [(c) + (j)]\* fixed fee 10% ] \$ 2,372.28****l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -

**l) TOTAL OTHER DIRECT COSTS \$ -****m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$
Subconsultant 2:	\$
Subconsultant 3:	\$
Subconsultant 4:	\$
<b>(m) TOTAL SUBCONSULTANTS' COSTS</b>	<b>\$ -</b>

**(n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ -****TOTAL COST [(c) + (j) + (k) + (n)] \$ 26,095.11**

## COST PROPOSAL 1

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$ 10,520.10	/ 232	= \$45.35	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all periods (Increase the Average hourly rate for a period by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$45.35	+	5%	=	\$47.61	Year 2 Avg Hourly
Year 2	\$47.61	+	5%	=	\$49.99	Year 3 Avg Hourly
Year 3	\$49.99	+	5%	=	\$52.49	Year 4 Avg Hourly Rate
Year 4	\$52.49	+	5%	=	\$55.12	Year 5 Avg Hourly Rate

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

	Estimated % Completed Each Period		Total Hours per Cost Proposal		Total Hours per Period	
Year 1	50.00%	*	232	=	116	Estimated Hours Year 1
Year 2	50.00%	*	232	=	116	Estimated Hours Year 2
Year 3	0.00%	*	232	=	0	Estimated Hours Year 3
Year 4	0.00%	*	232	=	0	Estimated Hours Year 4
Year 5	0.00%	*	232	=	0	Estimated Hours Year 5
Total	100%		Total	=	232	

**4. Calculate Total Costs including Escalation (Multiply average hourly rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated Hours (calculated above)		Cost Per Period	
Year 1	\$45.35	*	116	=	\$5,260.05	Estimated Hours Year 1
Year 2	\$47.61	*	116	=	\$5,523.05	Estimated Hours Year 2
Year 3	\$49.99	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$52.49	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$55.12	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$10,783.10	
Direct Labor Subtotal before escalation				=	\$10,520.10	
Estimated total of Direct Labor Salary Increase				=	\$263.00	Transfer to Page 1

## COST PROPOSAL 1

**Certification of Direct Costs:**

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


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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost

**Prime Consultant or Subconsultant Certifying:**

Name: Ana Marie LeNoue Title\*: CEO / President

Signature:  Date of Certification (mm/dd/yyyy): 10/9/2024

Email: [alenoue@agi.com.co](mailto:alenoue@agi.com.co) Phone Number: 714-401-9362

Address: 807 S. Lemon Ave., Diamond Bar, CA 91789

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

List services the consultant is providing under the proposed contract:

Funding Administration



## California Safe Harbor Indirect Cost Rate Program

### Consultant Firm Certification of Eligibility and Certification of Financial Management System

Consultant Firm Name Advanced Avant-Garde Corporation

Local Agency (if applicable) \_\_\_\_\_

Contract Number / Federal Project Number TBD HSIPL-5312(107)

Contract Total \$ ~~TBD~~ \$309,729.75

For Subconsultant Firms – estimated % of work to be performed 1 8.68 %

Safe Harbor Indirect Cost Rate (SHR): **Home: 120% and/or Field: 90%**

Field SHR will be utilized for contracts where the work deliverables are not completed from the consultant offices (i.e. Construction Inspection, Material Testing, Sources Inspection, others).

#### Consultant Firm Certification of Eligibility

I, the undersigned, certify that I am eligible to use the Safe Harbor indirect cost rate as I:

1. Am not a Prime Consultant Firm on a Caltrans contract > \$3.5M, or Local Government contract > \$1M, regardless of the participation amount.
2. Have not used SHR for more than three (3) years since entering the program on a state or federally funded contract.

AND

1. Do not have relevant contract cost history to use as a base for developing a Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31 compliant ICR.
2. Do not have a previously accepted ICR by a cognizant agency, or with an audited/accepted actual ICR, and do not have an existing contract with a provisional rate.

#### Certification of Financial Management System

I, the undersigned, certify that our financial management system in place for this contract and moving forward meets the standards for the Safe Harbor indirect cost rate requirements and financial reporting, accounting records, internal and budget control as set forth in 2 CFR 200, Subpart D. These standards require consulting firms have an accounting system

## California Safe Harbor Indirect Cost Rate Program

adequate to accumulate, and track allowable, allocable, and reasonable direct labor and other direct costs by contract; segregate indirect costs and remove unallowable costs.

Print Name

Ana Marie LeDove

Signature

(Electronic Signature Allowed)

Ana Marie LeDove

Title

President/CEO

Date Completed

10/10/2024

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

### Definition of Terms

Direct Cost is any cost that is identified specifically with a particular cost objective. Direct costs are not limited to items that are incorporated in the end products as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified with other final cost objectives of the contractor are direct costs of those objectives, 48 CFR 31.202.

Indirect or overhead cost is any cost that is not directly identified with a single final cost objective but is identified with two or more final cost objectives or with at least one intermediate cost objective, 48 CFR 31. 203.

### References

Title 48 Code of Federal Regulations (CFR) Part 31 -Federal cost principles.

Title 48 CFR Chapter 99, Subchapter B - Procurement Practices and Cost Accounting Standards.

Title is 2 CFR 200 Subpart D, Standards for Financial and Program Management.

Title 23 United States Code (U.S.C.), Chapter 1, Section 112 - Letting of Contracts.

Title 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services.

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit & Accounting Guide (2016 Edition).

## California Safe Harbor Indirect Cost Rate Program

### **Caltrans Contract**

If participating on a Caltrans Contract, also attach a completed copy of the following Safe Harbor Indirect Cost Rate Questionnaire for Evaluating Consultant Firm's Financial Management System.

## California Safe Harbor Indirect Cost Rate Program

### Questionnaire for Evaluating Consultant Firm's Financial Management System

Consultant Firm Name Advanced Avant - Grande Corporation

Firm Headquarters Address 807 S. Lemon Ave., Diamond Bar  
CA 91789

#### Accounting Records

- Location where Accounting records are held Firm HQ
- Name and Title Lisette Montoya, Vice President/CFO
- Email and Phone lmontoya@agi.com.co / (323) 371-5530
- Mailing Address 807 S. Lemon Ave., Diamond Bar  
CA 91789

To be eligible for Safe Harbor indirect cost rate (SHR), the Consultant Firm's financial management system must be adequate to accumulate and track direct labor and other direct costs by contract, segregate indirect costs, and remove unallowable costs in accordance with 48 CFR 31 for the different business segments.

#### Instructions

1. Answer all questions and provide an explanation and additional supporting documentation where requested.
2. If additional space is required, please attach a separate sheet and refer to items being answered by number.

Has the Firm developed an indirect cost rate in the past? Yes ☐ No ☒

If "Yes", you are NOT ELIGIBLE to use the SHR.

DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an ICR Schedule.

Is the Firm a Prime Consultant Firm on a Caltrans contract > \$3.5M Yes ☐ No ☒

Or Local Government contract > \$1M, regardless of the participation Amount?

If "Yes", you are NOT ELIGIBLE to use the SHR.

DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an AUDITED ICR Report.

## California Safe Harbor Indirect Cost Rate Program

1. What form of business entity is the Firm?

Sole Proprietorship ☐ Partnership ☐ C Corporation ☐ S Corporation ☒

Other \_\_\_\_\_

2. What types of services will the Firm provide for this contract? (Select all that apply.)

Architectural and Engineering Services ☐ Program Management ☒

Preliminary Engineering ☐ Design Engineering ☐

Surveying ☐ Feasibility Studies ☐

Mapping or Architectural Related Services ☐ Other Fund Administration

3. Does the Firm have prior government contracting experience? Yes ☒ No ☐

4. Does the general ledger contain separate direct and indirect accounts for the following?

Labor Yes ☐ No ☒ Non-Labor Yes ☐ No ☒

5. Does the company have a system in place to identify and remove from the indirect cost pools all unallowable cost? Yes ☒ No ☐

6. Does the firm assign a unique identification/project number in your accounting system for each contract/project?

Yes ☒ No ☐

7. Is indirect and direct labor separated by contract/project/cost objectives on employee timesheets with unique reporting codes?

Yes ☒ No ☐

## California Safe Harbor Indirect Cost Rate Program

8. Do you have written policies on the following cost categories?

Accounting	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Overtime	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Billing	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Direct/Indirect Expenses	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Timesheet Preparation	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Prevailing Wage	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Bonus	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			

9. What types of employee status will the Firm provide for this contract?

Non-exempt ☒ Exempt-salaried ☒ Exempt-hourly ☒ Contract Employee ☒  
Other \_\_\_\_\_

10. Does the Firm pay overtime for exempt employees?

Yes ☐ No ☒

11. Besides labor, does the Firm normally bill/invoice the following as direct contract/project costs? (Select all that apply)

Vehicle _____	Shipping _____
Computer/CADD _____	Lab _____
Printing _____	Travel _____
Specialty Equipment _____ (List below)	Other (List below) _____

12. Are mileage logs maintained for all vehicles? If no, please explain below.

Explanation N/A - no company vehicles

Where is the vehicle stored after work? N/A

Does employee use vehicle for personal use? Yes \_\_\_\_\_ No ☒

What is the recovery/billing rate used for Firm or personal vehicle mileage reimbursement?

\$ 0.67 per mile

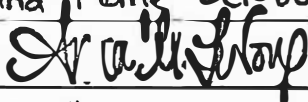
## California Safe Harbor Indirect Cost Rate Program

I certify that to the best of my knowledge and belief the responses to this questionnaire are accurate.

Print Name

Ana Marie LeNoue

Signature



(Electronic Signature Allowed)

Title

President / CEO

Date Completed

10/10/2024

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

**COST PROPOSAL 1**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐

Prime Consultant

☒

Subconsultant

☐

2nd Tier Subconsultant

Consultant LIN Consulting, Inc.Project No. HISPL-5312 (107)

Contract No. \_\_\_\_\_

Date 10/9/2024**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal	William Sun	8	\$101.00	\$ 808.00
Project Manager	Tracy Moriya	28	\$79.00	\$ 2,212.00
Assistant Project Manager	Ryan Woo	36	\$53.50	\$ 1,926.00
Project Engineer	Steven Hak	94	\$40.00	\$ 3,760.00
Assistant Engineer	Samuel Adan	82	\$28.00	\$ 2,296.00
				\$ -
				\$ -
				\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs

\$ 11,002.00

b) Anticipated Salary Increases (see Anticipated Salary Increases page for calculations)

\$ 220.04

**c) Total Direct Labor Costs [(a) + (b)] \$ 11,222.04****INDIRECT COSTS**d) Fringe Benefits (Rate: 35.25%)

e) Total Fringe Benefits [(c) x (d)] \$ 3,955.77

f) Overhead (Rate: 76.09%)

g) Overhead [(c) x (f)] \$ 8,538.85

h) General and Administrative (Rate: 45.40%)

i) Gen &amp; Admin [(c) x (h)] \$ 5,094.81

**j) Total Indirect Costs [(e) + (g) + (i)] \$ 17,589.43****FIXED FEE****k) TOTAL FIXED FEE [(c) + (j)]\* fixed fee 10% ] \$ 2,881.15****l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	330	Miles	\$0.67	\$ 221.10
			\$0.00	\$ -
			\$0.00	\$ -
			\$0.00	\$ -

**l) TOTAL OTHER DIRECT COSTS \$ 221.10****m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$ -
Subconsultant 2:	\$ -
Subconsultant 3:	\$ -
Subconsultant 4:	\$ -
<b>(m) TOTAL SUBCONSULTANTS' COSTS</b>	<b>\$ -</b>

**(n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ 221.10****TOTAL COST [(c) + (j) + (k) + (n)] \$ 31,913.71**



## COST PROPOSAL 1

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal		Total Hours per Cost Proposal		Avg Hourly Rate	<b>5 Year Contract Duration</b>
\$11,002.00	/	248	=	\$44.36	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all periods (Increase the Average hourly rate for a period by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$44.36	+	5%	=	\$46.58	Year 2 Avg Hourly
Year 2	\$46.58	+	5%	=	\$48.91	Year 3 Avg Hourly
Year 3	\$48.91	+	5%	=	\$51.36	Year 4 Avg Hourly Rate
Year 4	\$51.36	+	5%	=	\$53.92	Year 5 Avg Hourly Rate

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

	Estimated % Completed Each Period		Total Hours per Cost Proposal		Total Hours per Period	
Year 1	60.00%	*	248	=	148.8	Estimated Hours Year 1
Year 2	40.00%	*	248	=	99.2	Estimated Hours Year 2
Year 3	0.00%	*	248	=	0	Estimated Hours Year 3
Year 4	0.00%	*	248	=	0	Estimated Hours Year 4
Year 5	0.00%	*	248	=	0	Estimated Hours Year 5
Total	100%		Total	=	248	

**4. Calculate Total Costs including Escalation (Multiply average hourly rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated Hours (calculated above)		Cost Per Period	
Year 1	\$44.36	*	148.8	=	\$6,601.20	Estimated Hours Year 1
Year 2	\$46.58	*	99.2	=	\$4,620.84	Estimated Hours Year 2
Year 3	\$48.91	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$51.36	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$53.92	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$11,222.04	
Direct Labor Subtotal before escalation				=	\$11,002.00	
Estimated total of Direct Labor Salary Increase				=	<b>\$220.04</b>	Transfer to Page 1

## COST PROPOSAL 1

**Certification of Direct Costs:**

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


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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost

**Prime Consultant or Subconsultant Certifying:**

Name: William Sun Title\*: Principal

Signature:  Date of Certification (mm/dd/yyyy): 10/9/2024

Email: [wsun@linconsulting.com](mailto:wsun@linconsulting.com) Phone Number: 909-396-6850

Address: 21660 Copley Drive, Suite 270, Diamond Bar, CA 91765

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

List services the consultant is providing under the proposed contract:

Subconsultant to provide design plans and estimates for 28 intersections



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

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

Consultant's Full Legal Name: LIN Consulting, Inc.

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

### Indirect Cost Rate (ICR):

Combined Rate: 156.74 Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

Fiscal Period:\* 01/01/2023~12/31/2023

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

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

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

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

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

Our financial management system has the following attributes:

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

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

### Cost Reimbursements on Contracts:

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

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

### All A&E Contract Information:

- Total participation amount 7,376,445.00 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 1
- Years of consultant's experience with 48 CFR Part 31 is 19
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☐

Local Govt ICR Audit ☐

Caltrans ICR Audit ☐

CPA ICR Audit ☐

Federal Govt ICR Audit ☐

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

Name:\*\* Sandy Hou

Title:\*\* Corporate Secretary/Principal

Signature: Sandy Hou

Digitally signed by Sandy Hou  
DN: cn=Sandy Hou, o=LIN Consulting,  
email=shou@linconsulting.com, c=US  
Date: 2024.10.08 09:20:16-07'00'

Date: 10/08/2024

Phone:\*\* (909) 396-6850

Email:\*\* shou@linconsulting.com

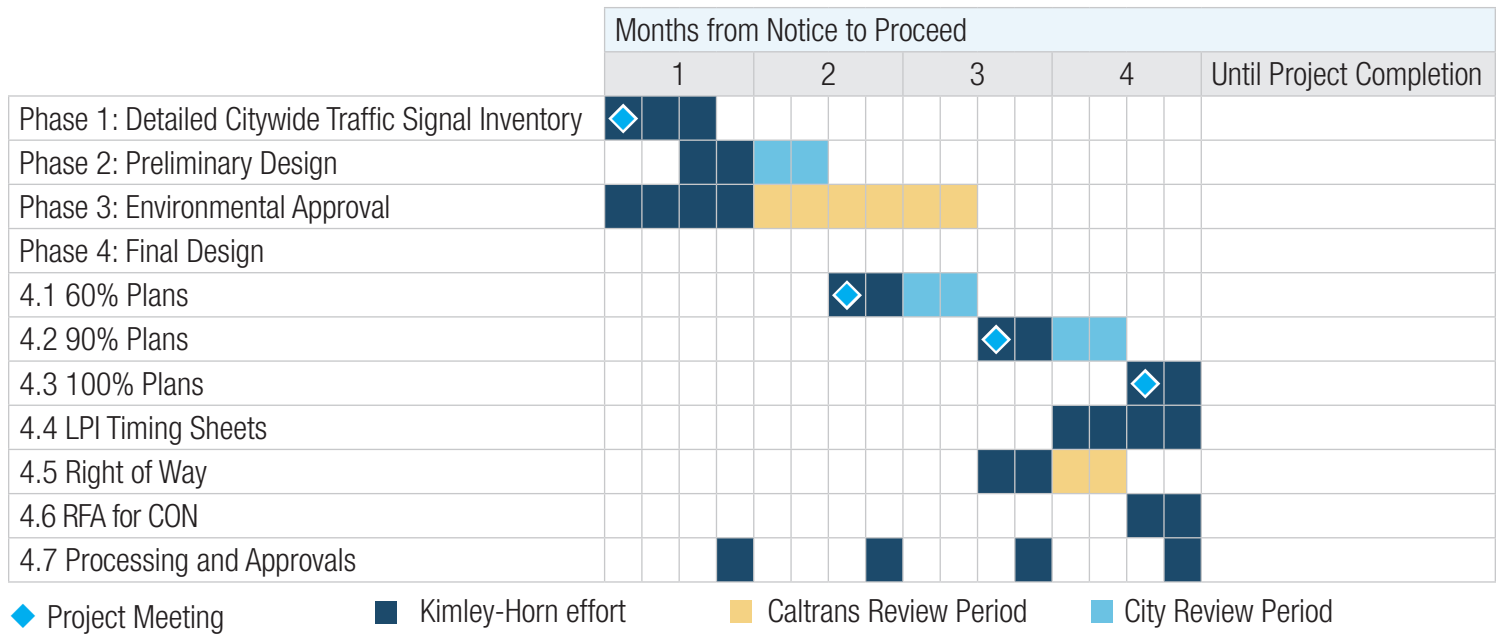
\*\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

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

**EXHIBIT D**

**PROJECT SCHEDULE**

## Project Schedule



**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

## CITY OF COSTA MESA, CALIFORNIA

### COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

#### BACKGROUND

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Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

#### PURPOSE

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It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

#### POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:



<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

**EXHIBIT F**

**ARTICLE XXXII TITLE VI ASSURANCES  
APPENDIX A**

## APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. **Compliance with Regulations:** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. **Nondiscrimination:** CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. **Incorporation of Provisions:** CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction,

CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

**EXHIBIT G**

**ARTICLE XXXII TITLE VI ASSURANCES  
APPENDIX B**

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**EXHIBIT H**

**ARTICLE XXXII TITLE VI ASSURANCES –  
APPENDIX C**

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER  
THE ACTIVITY, FACILITY, OR PROGRAM**



**APPENDIX C**  
**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE**  
**ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**EXHIBIT I**

**ARTICLE XXXII TITLE VI ASSURANCES**

**APPENDIX D**

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER  
THE ACTIVITY, FACILITY OR PROGRAM**

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER**  
**THE ACTIVITY, FACILITY OR PROGRAM**

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
  
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
  
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

**EXHIBIT J**

**ARTICLE XXXII TITLE VI ASSURANCES  
APPENDIX E**

## **APPENDIX E**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin; and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38; • The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful

access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

**EXHIBIT K**

**DEBARMENT AND SUSPENSION CERTIFICATION**

## **DEBARMENT AND SUSPENSION CERTIFICATION**

### **DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

**The Contractor, under penalty of perjury, certifies that, except as noted below, the Contractor, its principals, and any named and unnamed subcontractor:**

- **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 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 years.**

**If there are any exceptions to this certification, insert the exceptions in the following space. For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Exceptions will not necessarily result in denial of the award but will be considered in determining Contractor responsibility.**

**Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute the signature of this Certification.**

CONTRACTOR: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT L**

**ADDITIONAL CONTRACT PROVISIONS – FEDERAL PROVISION**

## **ADDITIONAL CONTRACT PROVISIONS – FEDERAL PROVISION**

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and City and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

### **I. General Provisions**

- A. Remedies.** In the event of a breach by Contractor of any term or provision of this Agreement, the City shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Contractor shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.
- B. Termination.** The City may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the City should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.
- C. Nondiscrimination.** Consultant, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including practices when the agreement covers a program set forth in Appendix B of the Regulations. During the performance of this contract, Contractor agrees as follows:
  - 1. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph 1 and the provisions of paragraphs 1 through 8 in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

CONSULTANT shall execute Exhibit “J,” Article XXXII Title VI Assurances, Appendix E.

**D. Rights to Inventions Made Under a Contract or Agreement.** If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Contractor (the “recipient or subrecipient”) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. This requirement applies to “funding agreements,” but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

**E. Clean Air Act and the Federal Water Pollution Control Act.** The following provisions apply for all contracts in excess of \$150,000:

1. **Clean Air Act** (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 740, *et seq.*
- b. The Contractor agrees to report each violation of the Clean Air Act to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

2. **Federal Water Pollution Control Act** (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 125, *et seq.*
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**F. Debarment and Suspension.** In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:

1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.

**G. Conflict of Interest.** By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of City's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100, *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090, *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.

**H. Byrd Anti-Lobbying Amendment.** For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the City.

**I. Procurement of Recovered Materials.**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
  - b. Meeting Contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**J. Access to Records.**

CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

1. The Contractor agrees to provide the City, the Federal Awarding Agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the Federal Awarding Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Federal Awarding Agency or the Comptroller General of the United States.

- K. Changes.** The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed

by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

- L. Seal, Logo, And Flags.** The Contractor shall not use the Department of Homeland Security, or any other Federal, state or local seals, logos, crests, or reproductions of flags or likenesses of agency officials without specific Federal Awarding Agency pre-approval.
- M. Compliance with Federal Law, Regulations and Executive Orders.** Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement. This is an acknowledgement that Federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, Federal Awarding Agency policies, procedures, and directives.
- N. Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including but not limited to: i) withholding of payments of CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or ii) cancellation, termination or suspension of the Agreement, in whole or in part.
- O. No Obligation of Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.
- P. Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
- Q. Local Preferences:** To the extent that any local preferences are prohibited by funding, SLEB and other local preferences and policies have already been or are waived.
- R. Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701–3708). For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the following provisions, from 29 C.F.R §5.5(b) shall apply:

  - 1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.



2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**S. Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, the contractor and their subcontractor(s), to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**T. Prohibition on Contracting for Covered Telecommunications Equipment and**

## **Services.**

1. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
2. Prohibitions.
  - a. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - b. Unless an exception in paragraph (3) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - (1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - (3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - (4) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
3. Exceptions.
  - a. This clause does not prohibit contractors from providing—

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. By necessary implication and regulation, the prohibitions also do not apply to:
  - (1) Covered telecommunications equipment or services that:
    - (a) Are *not used* as a substantial or essential component of any system; and
    - (b) Are *not used* as critical technology of any system.
  - (2) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

4. Reporting requirement.

- a. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (4)(b) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- b. The Contractor shall report the following information pursuant to paragraph (4)(a) of this clause:
  - (1) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (2) Within 10 business days of submitting the information in paragraph (4)(b)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

5. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

- U. License and Delivery of Works Subject to Copyright and Data Rights.** In order to comply with 2 C.F.R. § 200.315, Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.
- V. Affirmative Socioeconomic Steps for Subcontracts.** As a condition for the approval of any subcontract, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- W. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub – agreement, including procurements of materials of leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- X. Incorporation of Provisions.** CONSULTANT shall include the provisions of paragraphs C (Nondiscrimination), J (Information & Reports), M (Compliance with Regulations), N (Sanctions for noncompliance), and V (Solicitations for subagreements, including procurement of materials and equipment).

**CONSULTANT** shall take such action with respect to any sub-agreement or procurement as the recipient of FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

**II. Construction and Repair Work.** The following provisions apply to construction or repair work:

**Compliance with the Davis-Bacon Act and Copeland “Anti-Kickback” Act.** For all prime construction contracts in excess of \$2,000 the following terms shall apply:

**A. Davis-Bacon Act**

1. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Additionally, contractors are required to pay wages not less than once a week.

**B. Copeland “Anti-Kickback” Act**

1. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Federal Awarding Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**EXHIBIT M**

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

## **Disadvantaged Business Enterprises (DBE) Participation**

### **Disadvantaged Business Enterprises (DBE) Participation.**

- (1) CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant, shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts toward the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- (2) The goal for DBE participation for this AGREEMENT is twenty-six point six (26.6) percent. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-02: Consultant Contract DBE Commitment attached hereto as Exhibit "P," and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- (3) CONSULTANT can meet DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to

meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- (4) Contract Assurance. Under 49 CFR 26.13(b): CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid-contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: 1) withholding monthly progress payments; 2) Assessing sanctions; 3) Liquidated damages; and/or 4) Disqualifying CONSULTANT from future proposing as non-responsible.

- (5) Termination and Replacement of DBE Subconsultants.

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form.

Termination of DBE Subconsultants.

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

- a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- b. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
- c. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- d. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).



- e. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- f. Listed DBE is ineligible to work on the project because of suspension or debarment.
- g. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
- h. Listed DBE voluntarily withdraws with written notice from the Contract.
- i. Listed DBE is ineligible to receive credit for the type of work required.
- j. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
- k. The LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

- a. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of material should not occur.
- b. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
- c. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include the following: 1) One or more above listed justifiable reasons along with supporting documentation; 2) CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT'S written notice; and 3) The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants.

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:

a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation. b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following: 1) Description of scope of work and cost proposal; 2) Proposed subcontract agreement and written confirmation of agreement to perform on the Contract; 3) Revised Exhibit 10-O2: Consultant Contract DBE Commitment

2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

(6) Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including: 1) Name and business address of each 1st -tier subconsultant; 2) Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier; 3) Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

(7) Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the

Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- (8) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- (9) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- (10) CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- (11) If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- (12) For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later

than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- (13) Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

**EXHIBIT N**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
AGREEMENTS –  
CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
AGREEMENTS –  
CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title



**EXHIBIT O**

**THE IRAN CONTRACTING ACT (ICA) OF 2010**

## THE IRAN CONTRACTING ACT (ICA) OF 2010

For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: \_\_\_\_\_

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

CONTRACTOR: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**EXHIBIT P**

**CONSULTANT CONTRACT DBE COMMITMENT**

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

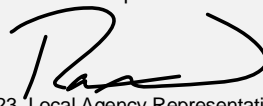
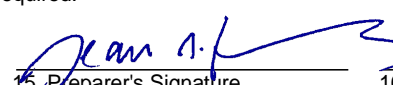
1. Local Agency: City of Costa Mesa 2. Contract DBE Goal: 20%

3. Project Description: SIGNAL MODERNIZATION FOR SYSTEMIC SAFETY IMPROVEMENTS

4. Project Location: Costa Mesa, CA

5. Consultant's Name: Kimley-Horn and Associates, Inc. 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: \$300,729.25

8. Total Dollar Amount for **ALL** Subconsultants: \$79,999.63 9. Total Number of **ALL** Subconsultants: 3

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Environmental Documentation and Caltrans LAPM documentation	36060	Advanced Avant-Garde Corporation 3670 W Temple Ave, Ste. 278 Pomona, CA 91768 Ana Marie Lenoue / 909-979-6586	\$26,095.11
Traffic Signal	49778	Architectural Engineering Technologies, DBA AET & Associates, Inc. 5132 Stone Canyon Avenue Yorba Linda, CA 92886 Uyen Pham / 714-837-2177	\$21,990.81
Traffic Signal Planning	28897	LIN Consulting, Inc. 21660 Copley Dr. # 270 Diamond Bar, CA 91765 Denwun Lin / 909-396-6850	\$31,913.71
<b>Local Agency to Complete this Section</b>			
20. Local Agency Contract Number:			<b>\$79,999.63</b>
21. Federal-Aid Project Number: <b>HSIPL-5312(107)</b>			
22. Contract Execution Date: <b>11/19/24</b>			<b>26.60%</b>
14. TOTAL CLAIMED DBE PARTICIPATION			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
23. Local Agency Representative's Signature 	24. Date <b>10/14/24</b>	15. Preparer's Signature 	16. Date <b>10/14/24</b>
25. Local Agency Representative's Name <b>Ramin Nikoui</b>	26. Phone <b>714-754-5184</b>	17. Preparer's Name <b>Jean B. Fares, PE</b>	18. Phone <b>213-354-9402</b>
27. Local Agency Representative's Title <b>Senior Engineer</b>		19. Preparer's Title <b>Sr. Vice President</b>	

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

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

**EXHIBIT Q**

**PROHIBITION ON EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR  
LOBBYING**

## **PROHIBITION ON EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

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

1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

## **EXHIBIT R**

### **COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

## **COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

### **COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.



## **EXHIBIT S**

### **RETENTION OF RECORD/AUDITS**

## **RETENTION OF RECORD/AUDITS**

### **RETENTION OF RECORD/AUDITS**

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

## **EXHIBIT T**

### **AUDIT REVIEW PROCEDURES**

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- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
  - 1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) -the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) -the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  - a. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
  - b. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR;
3. all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

**EXHIBIT U**

**SUBCONTRACTING**

## **SUBCONTRACTING**

### **SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- C. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- D. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- E. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

- F. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant. No retainage will be held by the LOCAL AGENCY from progress payments

due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. this clause applies to both DBE and non-DBE subconsultants.